

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 19, SUBREGION 36

In the Matter of:

Fox Television Stations, LLC, Case No. 28-RD-274741

Employer,

and

Victor Morales, an individual,

Petitioner,

and

National Association of
Broadcast Employees &
Technicians, The Broadcasting
and Cable Television Workers
Sector of the Communications
Workers of America, AFL-CIO,

Union.

Place: Portland, Oregon (via Zoom Videoconference)

Dates: June 25, 2021

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19, SUBREGION 36

In the Matter of:

FOX TELEVISION STATIONS, LLC,
Employer,

and

VICTOR MORALES, AN INDIVIDUAL,
Petitioner,

and

NATIONAL ASSOCIATION OF
BROADCAST EMPLOYEES &
TECHNICIANS, THE BROADCASTING
AND CABLE TELEVISION WORKERS
SECTOR OF THE COMMUNICATIONS
WORKERS OF AMERICA, AFL-CIO,

Union.

Case No. 28-RD-274741

The above-entitled matter came on for hearing, pursuant to notice, before **JENNIFER SCHULZE**, Hearing Officer, at the Green-Wyant Federal Building, 1220 SW Third Avenue, Suite 605, Portland, Oregon 97203, on **Friday, June 25, 2021, 9:52 a.m.**



1 A P P E A R A N C E S

2 **On behalf of the Employer:**

3 **KEVIN CASEY, ESQ.**
4 SENIOR VICE PRESIDENT
5 LABOR RELATIONS
6 FOX TELEVISION STATIONS, INC.
7 1211 Avenue of the Americas
8 21st Floor
9 New York, NY 10036

7 **On behalf of the Petitioner:**

8 **AARON B. SOLEM, ESQ.**
9 NATIONAL RIGHT TO WORK LEGAL DEFENSE
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10 Springfield, VA 22160

11 **On behalf of the Regional Director:**

12 **KYLER A. SCHEID, ESQ.**
13 NATIONAL LABOR RELATIONS BOARD
2600 North Central Avenue
Suite 1400
14 Phoenix, AZ
15 602-416-4769

16 **On behalf of the NABET:**

17 **RALPH M. PHILLIPS, ESQ.**
18 LEVY PHILLIPS APC, ATTORNEYS AT LAW
20700 Ventura Boulevard
Suite 320
19 Woodland Hills, CA 91364

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Thomas Casey	20, 33, 45	48, 54	59		32
John Scully	63	68, 69, 71			
Victor Morales	75				
Steve Ross	83	89			

E X H I B I T SEXHIBITIDENTIFIEDIN EVIDENCE**Board:**

B-1 (a) through 1 (d)

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Employer:

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Regional Director:

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RD-2

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RD-3

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Union:

U-1

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P R O C E E D I N G S

1
2 HEARING OFFICER SCHULZE: The hearing will be in order.
3 This is a hearing before the National Labor Relations Board, in
4 the matter of Fox Television Stations, LLC, case number
5 28-RD-274741, pursuant to the order of the Regional Director of
6 Region 19, dated June 14th, 2021.

7 The Hearing Officer conducting this hearing is Jennifer
8 Schulze, S-C-H-U-L-Z-E. The official reporter makes the only
9 official transcript of these proceedings, and all citations and
10 briefs and arguments must refer to the official record.

11 In the event that any of the parties wishes to make
12 off-the-record remarks, requests to make such remarks should be
13 directed to the Hearing Officer and not to the official
14 reporter.

15 Statements of reasons of support of motions and objections
16 should be specific and concise. Exceptions automatically
17 follow all adverse rulings. Objections and exceptions may, on
18 appropriate request, be permitted to an entire line of
19 questioning.

20 It appears in the Regional Director's order, dated June
21 14th, 2021, that this hearing is held for the purpose of taking
22 evidence on one issue raised in the Employer's objections.
23 That the board agent con -- conducting the mail ballot count on
24 May 24th, 2021 revealed how each voter had marked their ballot.

25 In an objections case, the burden of proof is on the



1 objecting party to prove its case. In due course, the Hearing
2 Officer will prepare and file with the Regional Director her
3 report and recommendations in this proceeding, and will cause a
4 copy thereof to be served on each of the parties. The
5 procedures to be followed from that point forward is set forth
6 in Section 102.69 of the Rules and Regulations.

7 With all that said, would counsel and other
8 representatives for the parties please state their appearance
9 for the record. For the Employer?

10 MR. CASEY: Kevin Casey, Senior Vice President of Labor
11 Relations for Fox Television Stations, LLC.

12 HEARING OFFICER SCHULZE: For the Union?

13 MR. PHILLIPS: For the Union, Ralph M. Phillips of Levy
14 Phillips APC, Woodland Hills, California.

15 HEARING OFFICER SCHULZE: For the Petitioner?

16 MR. PHILLIPS: Aaron Solem from National Right to Work
17 Legal Defense Foundation.

18 HEARING OFFICER SCHULZE: Thank you. And for -- let's
19 see. We have a regional director representative from Region
20 28.

21 MR. SCHEID: Me, I am Kyler Scheid, K-Y-L-E-R. My last
22 name is S-C-H-E-I-D. And I am appearing as the representative
23 for the Regional Director, Region 28, of the National Labor
24 Relations Board. I'm from our Phoenix regional office here in
25 Phoenix at 2600 Central Avenue.

1 I would add that I am here as a representative of the
2 Regional Director to see that the evidence use in the
3 investigation is made available to the Hearing Officer in this
4 case. In this function, I may ask some questions, and if
5 necessary, call witnesses.

6 I am not here to advocate on behalf of any party to this
7 proceeding, and my services are equally at the disposal of the
8 Hearing Officer and the parties throughout the case.

9 HEARING OFFICER SCHULZE: Thank you. Are there any other
10 appearances? Let the record show no response.

11 Will the parties please identify the issues for hearing
12 and their position on each issue. This will be your opening
13 statement. And we'll start with -- with the Employer, Mr.
14 Casey.

15 MR. CASEY: Thank you, Madam Hearing Officer. The
16 Employer objects to the election, specifically the tally of
17 ballots that occurred on March 24h, 2021. As we all know, all
18 elections administered by the National Labor Relations Board
19 are required to be done by secret ballot. That's a express
20 requirement by the National Labor Relations Act.

21 The very initial correspondence from Region 28, which was
22 the notice of petition, sent to the parties on March 26th,
23 2021, stated expressly that the election would be by secret
24 ballot.

25 Region 28 also issued on April 15th, 2021, notice of

1 election. Expressly guaranteeing the parties in writing that
2 the election would be held by secret ballot.

3 On the same date, April 15th, 2021, the parties, approved
4 by Region 28, executed a stipulated election agreement. That
5 was sent to the parties by Region 28. And that stipulated
6 election agreement also expressly stated that the Region would
7 conduct the election -- the mail ballot election by secret
8 ballot. It also -- it states specifically ballots received by
9 the Board will be comingled and counted by mail ballot.

10 The tally of ballot sheet that was issued by Region 28 on
11 the date of the election, May 24th, 2021, also states expressly
12 that the election is to occur by secret ballot. And as we
13 know, on the ballots themselves, including the sample ballot
14 that was attached to the Region's notice of election, states in
15 bold letters, secret ballot, and has other language warning
16 employees of not making marks that would identify themselves so
17 their vote remains secret.

18 Madam Hearing Officer, the evidence will show that at the
19 May 24th, 2021 hearing, or tally of ballots video conference
20 that was held by Zoom, the Board's agent, Michael Johnson,
21 failed to comingle the ballots and disclosed to all present the
22 names of the voter and immediately after that how each voter
23 voted by opening their individual ballot. Those present were
24 the Employer representative, the Union representative, the
25 Petitioner, the Petitioner's attorney, and the Board's

1 representative, Mr. Johnson.

2 Since the Board failed to maintain the secrecy of the
3 voter ballots, it's the Employer's position that the election
4 must be set aside. So that's it.

5 HEARING OFFICER SCHULZE: Thank you. And next, the
6 Petitioner.

7 MR. SOLEM: I would just add -- I don't think we have
8 anything else to add other than I agree with Mr. Casey's
9 opening statement.

10 HEARING OFFICER SCHULZE: Thank you. And for the Union?

11 MR. PHILLIPS: Thank you. The sole objection that is
12 subject to this hearing is whether in fact during the video
13 conference on May the 24th, the Board agent showed the name of
14 each individual voter's signature, number one; and number two,
15 reveal how each voter voted during the count. With respect to
16 that first part of that singular allegation, there's absolutely
17 nothing wrong with that. In fact, what is supposed to happen
18 under the Casehandling Manual with respect to the ballot count
19 in a mail ballot election is that the voting eligibility list
20 is supposed to be checked against the outer yellow envelope.
21 And you can't do that unless you have an opportunity to see
22 who's voting. At -- that's the whole point of it. And
23 essentially the yellow envelope stands in the shoes of a voter
24 was -- if there was to be a mail -- I mean, an -- an in-person
25 ballot. That person identifies themselves; their name gets

1 checked off a list. The same thing happens with the yellow
2 envelope.

3 If there is a problem here, the problem is with respect to
4 the second aspect of the objection, whether or not the Board
5 agent conducted the election in a manner that revealed how each
6 one of these voters voted during the count. And -- and I
7 understand that the Employer intends to call witnesses to
8 establish that fact.

9 I would point out to the -- to the Hearing Officer, and
10 for the record, that the same document that Mr. Casey just
11 quoted, the document dated April 15, 2021, from the Regional
12 Director to the parties, in closing the notice of election and
13 a copy of the stipulated election agreement, states quite
14 plainly that each party may have -- may have one representative
15 attend the count by video conference. It appears as if more
16 than one party -- more than one representative of a party, that
17 is the Employer, attended the video conference. The Union
18 followed the mandate of that letter and had one party. I did
19 not attend. Only the Union's president, Steve Ross, attended
20 on behalf of the Union. The Union would therefore object to
21 the testimony of -- of anyone other than the one person who was
22 supposed to be there for the Employer if -- if that proves to
23 be the case.

24 In any event, it doesn't really matter in terms of whether
25 or not the Board agent comingled or mixed thoroughly, as the



1 Casehandling Manual provides, the ballot -- envelopes, after
2 checking the outer yellow envelopes. That should have
3 happened, no question about that. That's specifically what is
4 called for. Not once in the Casehandling Manual, but twice.
5 And I -- I would simply refer to Section 11336.5(b) of the
6 Casehandling Manual that deal with that subject. It's -- and
7 it's -- it's -- it's clear.

8 The question really then is, before the Regional Director
9 for a decision, is whether or not if there was a violation of
10 the procedures as set forth, how that possibly could have
11 affected the outcome of the election. In fact, there is no way
12 that the Employer can show that what happened here affected the
13 outcome of the election.

14 The employees in this case all voted in good faith at --
15 at a time prior to this count when none of this activity could
16 have occurred. And it -- it's obvious that should there be a
17 new election directed, a rerun election of some kind, most
18 likely due to this current health circumstances, it would be a
19 manual election at this point based upon the -- the Board's
20 decision in Aspirus. The circumstances just don't exist I -- I
21 don't believe that warrant a -- another mail ballot election,
22 but that could be a question that would be dealt with later.

23 In any event, now we have a manual election with Employer
24 representatives who know how these people voted, and these
25 people are expected to walk right past them and write and their

1 vote again. Now, that puts a lot of undue pressure,
2 unnecessary pressure and unfairness on these potential voters.
3 It allows the Employer prior to any rerun election to focus on
4 the persons it wants to focus on and try to affect the outcome
5 of the election again by their -- by their pressure. It's not
6 fair to them. They voted once. They voted fairly. They voted
7 without any undue influence, that we are aware of, and they
8 should not have to vote again with undue influence at this
9 point in time.

10 So there's a Board case on this subject. I -- I would
11 cite for the record it's called Stericycle. And the citation
12 for that case is 4-RC-260851. And the order that issued in
13 February of 2021 from the -- from the -- from the Board itself
14 denying the request for review pointed out that to set aside an
15 election in a circumstance, not -- not exactly like this but in
16 a similar resulting circumstance, would result in -- in waste
17 of resources and delay and would be a disservice to the
18 employees who cast their ballots in good faith.

19 That's the case -- would be the case here. The Union
20 would rely upon that case in support of its view that --
21 whether or not a procedural violation occurred -- a procedural
22 violation of the Board's Casehandling Manual. And it did not
23 affect the outcome of the election, and would in fact cause an
24 effect on the outcome of the next election should a rerun be
25 ordered. And would suggest that that not be an appropriate

1 remedy. Thank you.

2 HEARING OFFICER SCHULZE: Thank you. And can you repeat
3 for me the last -- the few numbers of that case? I got -- it
4 was 4-RC-26 --

5 MR. PHILLIPS: Yeah, sorry. I was looking for the actual
6 Board decision and I -- it's not right at hand here, but the --
7 the RC number is 4-RC-260851. And it's called Stericycle,
8 S-T-E-R-I-C-Y-C-L-E, Inc. It's an unpublished Board decision,
9 by the way.

10 HEARING OFFICER SCHULZE: Thank you. I now propose
11 receiving the formal papers. They have been marked for
12 identification as Board Exhibit 1(a) through (d), with Exhibit
13 1(d) being an index and description of the entire exhibit.

14 I'll let the parties review these documents first. I'll
15 need to email these documents to the parties. So we'll go off
16 the record in order to allow me to email them and to give the
17 parties some time to review the documents. So off the record.
18 (Off the record at 10:08 a.m.)

19 HEARING OFFICER SCHULZE: At this point Board Exhibit 1
20 has been shown to all parties. Are there any objections to
21 receipt of this exhibit into the record? From the Employer?

22 MR. CASEY: No objection.

23 HEARING OFFICER SCHULZE: Thank you. From the Petitioner?

24 MR. SOLEM: No objection.

25 HEARING OFFICER SCHULZE: Thank you. And from the Union?



1 MR. PHILLIPS: None.

2 HEARING OFFICER SCHULZE: Thank you. And for the Regional
3 Director of Region 28, did you have any objections?

4 MR. SCHEID: No objection.

5 HEARING OFFICER SCHULZE: Okay. Great. Then Board
6 Exhibit 1 is received into evidence.

7 **(Board Exhibit Number 1(a) through 1(d) Received into Evidence)**

8 HEARING OFFICER SCHULZE: And I believe we've already sent
9 a copy to the court reporter, but if you need another one, let
10 me know.

11 Before we went on the record, we did discuss some
12 pre-hearing motions, and I want to be sure that we're all on
13 the same page. So I'll ask at this point. Are there any
14 pre-hearing motions that need to be made by any party that need
15 to be addressed at this time? For the Employer?

16 MR. CASEY: Not if the representative for Region 28
17 intends to put into evidence the sample yellow and blue
18 envelopes, Madam Hearing Officer.

19 HEARING OFFICER SCHULZE: Okay, thank you. And I'll ask
20 of the other parties. So Petitioner, any pre-hearing
21 motions --

22 MR. SOLEM: No.

23 HEARING OFFICER SCHULZE: -- that need to be addressed?
24 Okay. And then from the Union?

25 MR. PHILLIPS: None.

1 HEARING OFFICER SCHULZE: Okay, great. So now I would
2 move into the presentation of the first witness, but I believe
3 that Mr. Scheid was going to enter in documents. Is now a good
4 time for that?

5 MR. SCHEID: Yes, it is, thank you. So I have made a
6 request pursuant to Section 102.118 of the Board Rules and
7 Regulations to provide documents at the hearing in this matter,
8 and I received authorization to do so. And at this time I'm
9 offering two exhibits. I have marked them Regional Director's
10 Exhibit 1 and 2. These exhibits contain documents that are
11 self-authenticated via the Federal Rule of Evidence 902.
12 They're accurate and correct copies of official documents
13 recorded in our case file for this matter. And I've shared
14 these documents with the parties. I have not sent them to the
15 court reporter yet but as soon as Madam Hearing Office admits
16 the documents, I will forward them to the court reporter.

17 The first exhibit, Regional Director's Exhibit 1, is a
18 copy of the voter list that was used by the Board agent in this
19 case. It's a three-page document. At this time I would offer
20 Regional Director's Exhibit 1.

21 HEARING OFFICER SCHULZE: Are there any objections to
22 Regional Director's Exhibit 1? And we'll go through it. The
23 Employer?

24 MR. CASEY: One second, Madam Hearing Officer. I just
25 want to -- no objection.

1 HEARING OFFICER SCHULZE: Okay. Any objection from the
2 Petitioner?

3 MR. SOLEM: No objection.

4 HEARING OFFICER SCHULZE: Okay. Any objection from the
5 Union?

6 MR. PHILLIPS: I -- I would ask simply for some additional
7 explanation, which perhaps can go in by stipulation. I -- I
8 notice on that exhibit -- excuse me -- that there is both typed
9 information and what appears to be handwritten information.
10 I'd like some stipulation as to the source of the handwritten
11 information that appears on -- on the exhibit.

12 MR. SCHEID: I can -- I can (audio interference). So
13 the -- the handwritten information I believe you're referring
14 to are the -- the slash marks on the left-hand side of each
15 page of the document through the numbers. (Audio interference)
16 voters. And on page 2, there's some handwriting in the middle
17 of the page. That -- that handwriting is the Board agent's
18 handwriting who conducted the tally of ballots. And this is
19 how he checked off the voter list that he had in his
20 possession. This is the voter list that he used.

21 The typed document is a document that's created by our
22 office. And the handling of a mail ballot election. It -- it
23 creates voter -- E-numbers for each voter, for the sending and
24 receipt and tracking of the ballots that are sent out. Any
25 notes that are in there, I believe there might be one on the

1 third page, those are notes that (audio interference) by our
2 office manager regarding any issues sending or receiving
3 ballots. Sometimes a potential voter may ask for a duplicate
4 ballot because they did not receive one for whatever reason, so
5 those ballots would be reflected in there. Yeah.

6 MR. PHILLIPS: I see -- I see no other handwritten
7 information other than at number 14 on what I believe is the
8 second page. And -- and I understand that the information that
9 you've just offered is that that was placed on space -- in
10 space 14 there, that line, by the Board agent conducting the
11 election.

12 MR. SCHEID: That is correct.

13 MR. PHILLIPS: All right. And that's it as far as any
14 handwritten stuff. The rest of it I understand was prepared by
15 the Regional Office. And based on those representations, the
16 Union has no objection to that document.

17 HEARING OFFICER SCHULZE: Thank you. So Regional
18 Director's Exhibit 1 is received into evidence.

19 **(Regional Director Exhibit Number 1 Received into Evidence)**

20 MR. SCHEID: The second exhibit, which I've marked
21 Regional Director's Exhibit 2, is a two-page document. And
22 this document contains scanned images of the front and back of
23 one of the exterior yellow envelopes used for this election.
24 And also contains the front and back of one of the interior
25 blue envelopes, which we have heard counsel talk about in their

1 opening statement, that was used in this election. And at this
2 (audio interference) Regional Director's Exhibit 2.

3 HEARING OFFICER SCHULZE: Are there any objections to the
4 receipt of Regional Director's Exhibit 2? Employer?

5 MR. CASEY: No objection from the Employer.

6 HEARING OFFICER SCHULZE: Okay. Petitioner?

7 MR. SOLEM: No objection.

8 HEARING OFFICER SCHULZE: Thank you. And Union?

9 MR. PHILLIPS: None.

10 HEARING OFFICER SCHULZE: Okay. Then Regional Director
11 Exhibit 2 is received into evidence.

12 **(Regional Director Exhibit Number 2 Received into Evidence)**

13 HEARING OFFICER SCHULZE: Okay.

14 MR. SCHEID: At this time those are the only two exhibits
15 that the Regional Director will be introducing.

16 HEARING OFFICER SCHULZE: Okay. Thank you. Okay. So
17 moving on. Employer, please present your first witness.

18 MR. CASEY: Madam Hearing Officer, since we have exhibits
19 that we would like to share with counsel and the court
20 reporter, perhaps at this time we can email those exhibits that
21 are labeled E-1, -2, -3 through I think -7 or -8. Maybe not
22 even. And this would allow the court reporter to also bring up
23 those documents for witness testimony.

24 HEARING OFFICER SCHULZE: And when you say bring them up,
25 what do you mean?

1 MR. CASEY: So we can show them to the witness.

2 HEARING OFFICER SCHULZE: Are you -- are you talking about
3 sharing the screen?

4 MR. CASEY: Yes. That -- we would ask the court reporter
5 to then bring the document up as we ask our witness to identify
6 the document and testify to it.

7 HEARING OFFICER SCHULZE: All right. Give me one moment.
8 Let's go off the record.

9 MR. CASEY: Okay.
10 (Off the record at 10:33 a.m.)

11 HEARING OFFICER SCHULZE: Employer, please present your
12 first witness.

13 MR. CASEY: The Employer calls Thomas Casey.

14 HEARING OFFICER SCHULZE: Okay. So before I administer
15 the oath to Mr. Casey, I am going to ask Mr. Ross to turn off
16 your video. Thank -- perfect. All right.

17 And Mr. Casey -- let's see. Go ahead and raise your right
18 hand.

19 Whereupon,

20 **THOMAS CASEY**

21 having been duly sworn, was called as a witness herein and was
22 examined and testified as follows:

23 HEARING OFFICER SCHULZE: Wonderful. Please state your
24 name and spell it for the record.

25 THE WITNESS: My name's Thomas Casey, T-H-O-M-A-S



1 C-A-S-E-Y.

2 HEARING OFFICER SCHULZE: Okay. Employer, you may begin.

3 **DIRECT EXAMINATION**

4 Q BY MR. CASEY: Tom, by whom are you employed?

5 A I am employed by Fox Television Stations, LLC.

6 Q And where is your work location?

7 A I'm based out of New York.

8 Q And what is your job title?

9 A I'm labor relations counsel for Fox Television Stations.

10 Q Are you an attorney?

11 A I am.

12 Q And where are you admitted to practice?

13 A I'm admitted in New York and New Jersey.

14 Q Okay. How long have you been employed at Fox Television
15 Stations?

16 A I've been employed at Fox Television Stations since
17 September of 2018. So just short of three years.

18 Q Can you just briefly describe for the Hearing Officer your
19 job responsibilities as labor relations counsel?

20 A Sure. So I'm responsible for handling all matters related
21 to labor at all of the Fox Television Stations, owned and
22 operated stations, as well as the -- the facilities. And that
23 includes handling grievances filed by unions, and then any
24 grievances that go to arbitration. I represent the company and
25 defending them at arbitration. I assist management in -- in



1 disciplinary matters. I negotiate collective bargaining
2 agreements with the various unions of -- of stations. I defend
3 the company against ULP charges for the NLRB. And I assist
4 management in NLRB elections, including representation cases in
5 RD and RC elections.

6 Q And how many company locations does Fox Television
7 Stations have?

8 A They have 18 stations and they have one Las Vegas remote
9 master control hub.

10 Q Can you just describe, what is the Las Vegas master
11 control hub?

12 A It's a facility in Las Vegas that serves as a remote
13 master control operation for a number of the Fox Television
14 Stations.

15 Q And are there any employees represented by a union at the
16 company's Las Vegas master control hub?

17 A Yes. The Technicians and Senior Technicians are
18 represented by NABET-CWA, Local 53.

19 Q Okay. And do you know how long NABET has represented that
20 group of technicians?

21 A Since December of 2013.

22 Q And do you know how many technicians are in that
23 bargaining unit?

24 A There are 25 technicians.

25 Q Okay. Are you familiar with the decertification petition



1 filed in this matter, NLRB Case 28-RD-274741?

2 A I am.

3 Q And how are you familiar with it?

4 A We received a petition for decertification on March 26th,
5 2021.

6 Q Okay. I'd like to -- you to take a look at what's been
7 identified as Board Exhibit 1(a).

8 MR. CASEY: If we could bring that up for the witness,
9 that would be great.

10 THE WITNESS: I apologize. If there's too much backlight
11 from the window, let me know, I will move.

12 MR. CASEY: I think it's okay. It looks good from here.

13 Oh that's great. Thank you. If you could just go to the
14 top of the -- the petition. Yes, that's perfect. Thank you.

15 Q BY MR. CASEY: Are you familiar with this document, Tom?

16 A I am.

17 Q Okay. And what is this document?

18 A This is the petition that Fox received on March 26th,
19 2021.

20 Q And who was the Petitioner, do you know?

21 A Petitioner is Victor Morales, who's a NABET representative
22 technician at our Las Vegas hub.

23 Q Okay. And do you see in the middle, about one-third down,
24 it says the name Steven Ross. Do you know who that is?

25 A Yes. Steve Ross is the president of NABET Local 53.



1 Q Okay. Did you receive any other communications -- did the
2 company receive any other communications from the NLRB in
3 addition to the petition when you received the petition?

4 A Yes. Accompanying the petition, we received a notice of
5 petition from the NLRB.

6 Q Okay.

7 MR. CASEY: If I could bring up Employer Exhibit Number 1,
8 which is a March 26th letter from Region 28.

9 Q BY MR. CASEY: Do you recognize this document that has
10 been marked for identification as Employer Exhibit Number 1?

11 A Yes. The -- this was the -- there's a -- a letter, as
12 well as the notice of petition itself that we received on March
13 26th.

14 Q Do you -- if you remember, does this notice say anything
15 regarding a secret ballot election? And I would point you to
16 the notice of election attached.

17 MR. PHILLIPS: Well, the --the document speaks for itself.
18 We -- we have -- I -- I would state an objection on that basis.
19 And I -- I -- as I understood it, we had agreed that the
20 document could be admitted into the record.

21 MR. CASEY: The company's proposing witness testimony that
22 highlights the representations of Region 28 to the parties in
23 this election --

24 MR. PHILLIPS: But that -- that's a matter -- that's a
25 matter of argument. And the facts are what we're supposed to

1 be dealing with, and the facts speak -- speak for themselves.
2 The document speaks for itself.

3 HEARING OFFICER SCHULZE: Thank you. So the document is
4 the best evidence, and the Employer is going to -- is going to
5 move to have the receipt of Employer Exhibit 1 into evidence.
6 I'm trying -- I'm interested to see where you're going with
7 this questioning, so I'm going to overrule the objection for
8 now and -- and see where we go here. But again, if this is
9 something that could be covered by just me looking at the
10 document, I want to make sure that we're not cluttering the
11 record.

12 MR. CASEY: Well, we're not cluttering the record with any
13 other documents. This -- I would move for this to be admitted
14 into evidence.

15 HEARING OFFICER SCHULZE: Okay. Any objections to
16 Employer Exhibit 1 being admitted into evidence? I see that
17 Mr. Solem is shaking his head but that won't be -- be
18 captured --

19 MR. SOLEM: Yeah.

20 HEARING OFFICER SCHULZE: -- on the record.

21 MR. SOLEM: Yeah, sorry about that.

22 HEARING OFFICER SCHULZE: Okay.

23 MR. SOLEM: Great. So no objection from the Petitioner.
24 And from the Union, any objection?

25 MR. PHILLIPS: No objection to Employer's 1.

1 HEARING OFFICER SCHULZE: Okay. So Employer Exhibit 1 is
2 entered into evidence and --

3 **(Employer Exhibit Number 1 Received into Evidence)**

4 MR. SCHEID: The Regional Director doesn't object either.

5 HEARING OFFICER SCHULZE: Thank you. I -- I'm probably
6 going to do that a few more times because I'm just not used to
7 having a Regional Director rep present.

8 Okay. Mr. Casey, you may continue.

9 Q BY MR. CASEY: Tom, if you -- if you recall from the
10 letter, and without reading the letter, did the notice and the
11 letter that accompany it say anything about a secret ballot
12 election?

13 MR. PHILLIPS: The document --

14 THE WITNESS: Yes.

15 MR. PHILLIPS: -- speaks for itself.

16 HEARING OFFICER SCHULZE: This is the same objection from
17 before, so we're going to keep moving. I'm going to allow the
18 line of inquiry to see where we're going. But if -- if this
19 is -- is something where you're going to make the objection
20 each time he references the document, let's -- I'm going to
21 just hold on to the response and let him keep going unless I
22 tell him otherwise, okay.

23 MR. PHILLIPS: Standing objection is fine.

24 HEARING OFFICER SCHULZE: All right, thanks.

25 THE WITNESS: Yes, the -- the notice of election stated



1 that it -- an election was to be held. It would be a secret
2 ballot election.

3 Q BY MR. CASEY: Okay. And was there a Board agent assigned
4 to handle the election, if you know?

5 A Yes. The Board agent assigned to the petition was Michael
6 Johnson. And he's out of Region 28's Las Vegas office, I
7 believe.

8 Q Okay. Did there come a time when authorities, including
9 the Employer, the Region 28, and the Union, and the Petitioner
10 entered into an election agreement?

11 A Yes.

12 Q Okay. And do you remember when that was?

13 A That was on April 15th of this year, 2021.

14 Q Okay.

15 MR. CASEY: I'd like to bring up, please, Employer Exhibit
16 Number 2, which is multiple copies of the stipulated election
17 agreement. One copy signed by the Employer, one copy signed by
18 the Petitioner's representative, and one copy signed by the
19 Union.

20 Q BY MR. CASEY: Tom, I'm showing you what's been marked as
21 Employer Exhibit Number 2. Do you recognize that document?

22 A Yes, I do.

23 Q Can you describe what it is for the Hearing Officer,
24 please?

25 A Sure. That's three copies of the stipulated election

1 agreement. One copy is signed by the company; one copy is
2 signed by Mr. John Scully, who is an attorney at the National
3 Right to Work Foundation, who served as representative for
4 Petitioner, Victor Morales; and one copy is signed by Ralph
5 Phillips, who was counsel for NABET Local 53.

6 Q Okay. And what type of -- in -- in the stipulated
7 election agreement, what type of election did the parties agree
8 to?

9 A A mail ballot election.

10 Q Okay. And was a date set for the election?

11 A For the election, yes, a date was set.

12 Q And do you know when the ballots were to be mailed out and
13 when they were due back?

14 A Yes. So the -- the ballots were be -- to be mailed out by
15 Region 28 on April 30th of 2021. And the ballots were to be
16 returned to the Region no later than end of business May 14th,
17 2021.

18 Q And at that time was a date set for the counting of the
19 ballots or the tally of ballots?

20 A At that time, no, a -- a date had not been set.

21 Q Did the election agreement provide any information about
22 how the tally of ballots would be conducted, either in person
23 or by video conference?

24 A Yes. It stated that it would be conducted by video
25 conference, and that a Board agent would be assigned. And that



1 the Board agent would comingle the ballots and tally them and
2 count them.

3 Q Okay.

4 MR. CASEY: The company moves -- proposes to have Employer
5 Exhibit Number 2, the stipulated election agreement, all three
6 copies, entered into evidence -- or admitted into evidence,
7 rather.

8 HEARING OFFICER SCHULZE: Are there any objections to
9 Employer Exhibit 2 being entered into evidence?

10 MR. SOLEM: No objection from Petitioner.

11 HEARING OFFICER SCHULZE: Thank you.

12 MR. PHILLIPS: None.

13 HEARING OFFICER SCHULZE: I'm sorry, what as that, Mr.
14 Phillips?

15 MR. PHILLIPS: None.

16 HEARING OFFICER SCHULZE: Okay. So Employer Exhi --

17 MR. SCHEID: No objection from the Regional Director.

18 HEARING OFFICER SCHULZE: Darn it, I did it again. I'm so
19 sorry. Thank you.

20 So Employer Exhibit 2 is received into evidence.

21 **(Employer Exhibit Number 2 Received into Evidence)**

22 MR. CASEY: Okay. May I ask that Employer Exhibit 3, the
23 notice of election, be put up on the screen for the witness,
24 please.

25 Q BY MR. CASEY: Okay. Tom, I'm showing you what's been

1 marked for identification purposes as Employer Exhibit Number
2 3. On the very first page it says, notice of election. Are
3 you familiar with what -- this document?

4 A Yes.

5 Q And what is this document?

6 A This is the notice of election we received from Region 28.
7 I believe on the same day, April 15th of 2021.

8 Q Okay. And did this document mention anything, if you
9 remember, about a secret ballot election?

10 A Yes, it does. It's -- on the front page, this states that
11 the election will be conducted by a secret ballot.

12 Q Okay. And did the notice of election include a sample
13 ballot?

14 MR. CASEY: I think if you scroll down, please, the
15 witness can see the whole document.

16 THE WITNESS: It did.

17 Q BY MR. CASEY: Okay.

18 A And --

19 Q And -- the -- did the secret ballot -- did the sample
20 secret ballot -- I'm sorry, the sample ballot mention anything
21 about the election being secret?

22 A Yes. On the -- on the ballot, the sample ballot itself,
23 it states this is official secret ballot. And then on the
24 portion below where the voter would check yes or no, in capital
25 letters, it states, "Do not sign or write your name or include

1 other markings that would reveal your identity."

2 Q Okay.

3 MR. CASEY: The Employer moves for admittance, Employer
4 Exhibit Number 3, please.

5 HEARING OFFICER SCHULZE: Is there any objections to
6 the -- to admitting Employer Exhibit 3 into evidence?
7 Petitioner?

8 MR. SOLEM: Petitioner doesn't object.

9 HEARING OFFICER SCHULZE: Thank you. Union?

10 MR. PHILLIPS: None.

11 HEARING OFFICER SCHULZE: And Mr. Scheid?

12 MR. SCHEID: No objection from the Regional Director's
13 representative.

14 HEARING OFFICER SCHULZE: Okay. So Employer Exhibit
15 Number 3 is received into evidence. Thank you.

16 **(Employer Exhibit Number 3 Received into Evidence)**

17 MR. CASEY: Thank you.

18 Q BY MR. CASEY: Tom, going back -- we don't have to bring
19 the document up, but if you remember, the stipulated election
20 agreement that you testified to. Did it provide any
21 instructions regarding a voter list?

22 A Yes. Within two business days, the company was to provide
23 all parties and file with the Region a final voter list of all
24 eligible voters.

25 Q Did the company provide a voter list?



1 A Yes.

2 Q Okay.

3 MR. CASEY: If -- if we could please bring up Employer --
4 what's been marked as Employer Exhibit 4 for identification.

5 Q BY MR. CASEY: Tom, I'm showing you --

6 MR. CASEY: Thank you very much for bringing that up.

7 Q BY MR. CASEY: Tom, I'm showing you what's been marked as
8 Employer Exhibit Number 4 for identification purposes. Do you
9 recognize this document?

10 A Yes.

11 Q Can you explain what the -- what it is, including the top
12 page and then the following pages, for the Hearing Officer,
13 please.

14 A Yes. This is a -- the top page is the email confirmation
15 I received from the Board after I E-Filed the voter list. And
16 then it's the voter list itself. And then a copy of the
17 certificate of service of the -- on other parties of the voter
18 list.

19 Q And who created the voter list?

20 A I created the voter list.

21 Q And are you familiar with the employees and the names on
22 the voter list?

23 A I am.

24 Q Okay.

25 MR. CASEY: The company moves for admittance into evidence



1 Employer Exhibit Number 4.

2 HEARING OFFICER SCHULZE: Are there --

3 MR. PHILLIPS: I just have a -- I have a voir dire
4 question.

5 HEARING OFFICER SCHULZE: Go ahead.

6 MR. PHILLIPS: Okay. Could we have the document back up
7 for a second, please? Okay.

8 **VOIR DIRE EXAMINATION**

9 Q BY MR. PHILLIPS: And -- and -- just for ease of the
10 record, I'm going to, with your permission, refer to you as
11 Thomas so that Mr. Kevin Casey does not get confused --

12 A That's --

13 Q -- is that all right?

14 A That's fine. That's fine.

15 Q All right. Thomas, you -- you testified a moment ago --

16 MR. PHILLIPS: And if we can just look at the second page
17 of that exhibit. Thank you. That's -- that's good.

18 Q BY MR. PHILLIPS: I believe that you testified a moment
19 ago that you are familiar with these employees, the names that
20 are listed on the far left?

21 A Yes.

22 Q Do you know them?

23 A Not personally, no.

24 Q You've never met any of them personally; is that right?

25 A I -- personally, I have not met any of them, no.



1 Q So what is the basis for your saying that you're familiar
2 with them?

3 A I'm familiar with the names of the employees -- the names
4 themselves of the employees at the station -- at the hub
5 facility.

6 Q Just the names?

7 A The names, yes.

8 Q All right. Thanks.

9 MR. PHILLIPS: That's all I have on voir dire. I -- I
10 have no objection.

11 HEARING OFFICER SCHULZE: Okay. Thank you. And from the
12 Petitioner, any objection?

13 MR. SOLEM: No objection.

14 HEARING OFFICER SCHULZE: Thanks. And then from the
15 Regional Director's representative?

16 MR. SCHEID: No objection.

17 HEARING OFFICER SCHULZE: Wonderful. So Employer Exhibit
18 4 is received into evidence.

19 **(Employer Exhibit Number 4 Received into Evidence)**

20 HEARING OFFICER SCHULZE: And you may continue.

21 MR. CASEY: Thank you.

22 **RESUMED DIRECT EXAMINATION**

23 Q BY MR. CASEY: Tom, prior to the mail ballot -- the tally
24 of ballots in the election that's at issue in this case, have
25 you participated in the tally of ballots for any mail elections

1 prior to that?

2 A Yes, I have.

3 Q Okay. And when is the last time you participated in a
4 mail ballot election tally of ballots?

5 A It was on April 22nd of this year.

6 Q Okay. And was it done by video conference?

7 A It was done by video conference.

8 Q In what region?

9 A It was in Region 18, I believe.

10 Q Can you describe for the Hearing Officer how the tally was
11 conducted in that Region 18 --

12 MR. SCHEID: I'm going to --

13 Q BY MR. PHILLIPS: -- election?

14 MR. SCHEID: -- what the relevance of how a count was
15 conducted in Region 18. I -- I don't understand how that's
16 relevant to the objections in this case.

17 HEARING OFFICER SCHULZE: Actually, also don't understand
18 how that's relevant. If -- Kevin Casey, if you want to briefly
19 explain that to me.

20 MR. CASEY: Just to have the -- the witness describe how a
21 mail ballot election is properly conducted and maintains the
22 secrecy versus what occurred in this case.

23 MR. PHILLIPS: The -- the --

24 HEARING OFFICER SCHULZE: I -- I -- so -- okay. go ahead,
25 Petitioner.

1 MR. PHILLIPS: I'm sorry. Oh Petitioner.

2 HEARING OFFICER SCHULZE: I'm -- I'm so sorry. I'm so
3 sorry. Union, sorry about that.

4 MR. PHILLIPS: The Casehandling Manual is very clear about
5 how it's supposed to be done properly. That's the best
6 evidence of how it's supposed to be done. Not -- not some sort
7 of, you know, narrative about some other region and how they
8 did it or -- or didn't do it. That's not what this case is
9 about.

10 HEARING OFFICER SCHULZE: Okay. Did you want to respond,
11 Kevin Casey?

12 MR. CASEY: No. We can -- we can move on to -- we can
13 move on.

14 HEARING OFFICER SCHULZE: Okay. So then we're just going
15 to skip this line of questioning. I would -- I would agree
16 with the objections on this, and let's move on. I can take
17 administrative notice, I believe, of the Casehandling Manual
18 and how it states we're supposed to -- how the elections are
19 supposed to go. So let's go ahead and keep moving on. Thanks.

20 MR. CASEY: Okay, thank you.

21 Q BY MR. CASEY: Tom, let's talk about the instant case.
22 You previously stated that when you received the notice of
23 election, that there had not yet -- it did not contain a date
24 that the tally of ballots would occur. Was that date
25 ultimately scheduled?

1 A Yes. I believe it was on May 21st we received an email
2 with the Zoom link for an election tally ballots for May 24th,
3 2021. That's to be held at 1 p.m. Pacific Time.

4 Q And -- and -- and on what medium or platform -- was it
5 video conference?

6 A Yes, it was via Zoom Video conference.

7 Q Did you attend that video conference on behalf of the
8 company?

9 A Yes. I -- I served as the company representative in
10 that --

11 Q Okay.

12 A -- that tally.

13 Q So were you the only company representative that attended
14 that video conference, or were there other company
15 representatives that attended that video conference?

16 A I was the only company representative.

17 Q Okay. In addition to yourself, who else was present on
18 that video conference, if you remember, please?

19 A Yes. So Michael Johnson, who is -- was the NLRB Board
20 agent at Region 28 assigned the matter. In -- in addition, was
21 Steve Ross, president of NABET Local 53. John Scully from the
22 National Right to Work Foundation. And Petitioner, Victor
23 Morales.

24 Q And what was your understanding of Mr. Scully's role?

25 A He was there as attorney representative for Mr. Morales.



1 Q Okay. So can you please for the Hearing Officer, starting
2 with -- beginning of the video conference, describe what
3 occurred and the process that Mr. Johnson followed.

4 A Sure. Once everybody was up on the video conference, Mr.
5 Johnson began by noting that one -- one ballot was received by
6 the -- by the Region and did not have a signature. And he
7 stated that the envelope received didn't have a signature --
8 sorry, to clarify -- did not have a signature along the -- the
9 rear yellow envelope. And it was not received by the Region
10 until, I believe, he said May 13th. And because it was
11 received the day before the ballots were due, there was not
12 enough time to send out a provisional ballot. So the Board was
13 voiding that ballot. And he showed us the envelope, and that
14 was ballot number 14.

15 Q Okay. After Mr. Johnson set aside ballot number 14, what
16 happened after that?

17 A After that, I asked Mr. Johnson if he would be providing a
18 final voter list by the NLRB with key numbers along the -- the
19 left-hand side to correspond with the alphabetical names of
20 the -- of the voters. And Mr. Johnson stated he would not
21 provide that to myself or the other parties at the tally of
22 ballots.

23 Q Okay. And then what happened after that?

24 A After that, the tally of the ballots began. Mr. Johnson
25 began by -- to count the first yellow envelope, showing the

1 front of the envelope to the parties, then showing the rear
2 side of the envelope to the parties, and showing -- on the rear
3 side, showing the signature of the first employee -- employee
4 who voted. And then -- and you could see from the name that
5 that person was Michael Wooten. And then below the -- the
6 signature was a number. And that number was 25.

7 Q All right. And what did Mr. Johnson do after that?

8 A After that, he -- after showing the front and rear side of
9 the envelope, he then opened the yellow envelope, removed the
10 blue inner envelope. And then removed from the blue inner
11 envelope he took out the ballot, opened the ballot, read off
12 how Mr. Wooten had voted, and then showed Mr. Wooten's ballot
13 to his camera for all of the parties to view how Mr. Wooten
14 checked his ballot.

15 Q And as a result, did you learn how Mr. Wooten voted,
16 without saying how he voted?

17 A Yes, I did.

18 Q Okay. And what happened after that?

19 A After that, he picked up the second yellow envelope and
20 began. Showed the front and showed the back. And on the back
21 was the signature of John Vasquez. And below Mr. Vasquez's
22 name was a number 24. Mr. Johnson then took the envelope and
23 the same -- repeated the same process. He opened up Mr.
24 Vasquez's envelope, removed the inner blue envelope from that.
25 From the blue envelope he pulled out Mr. Vasquez's ballot, read

1 off what the ballot stated, and then showed Mr. Vasquez's --
2 his ballot to the parties.

3 Q As a result did you learn how Mr. Vasquez voted?

4 A Yes.

5 Q Okay. And what happened after that?

6 A He then picked up the next ballot, which was -- or the
7 next envelope, which was Bruce Twitchell's.

8 Q What color envelope, Tom --

9 A The yellow envelope, I apologize. So he picked up the
10 next yellow envelope. Same process. Showed the front, showed
11 the back. And on the back was Bruce Twitch -- Twitchell's
12 signature, the number 23 below it. He then opened up Mr.
13 Twitchell's envelope, pulled out the blue -- blue inner
14 envelope. And then removed Mr. Twitchell's ballot, read off
15 how Mr. Twitchell voted, and showed the ballot to his camera
16 for all representatives to view.

17 Q As a result, did you learn how Mr. Twitchell voted?

18 A Yes.

19 HEARING OFFICER SCHULZE: Mr. Phillips, you're muted.
20 Let's see, you're still on mute.

21 MR. PHILLIPS: There we go. I keep pressing buttons for
22 something to happen. Anyway, I'm sorry for that. I would just
23 interpose an objection to the point that this is becoming --
24 had become very duplicative. We can be doing this, like, maybe
25 22 times, and I'm not entirely sure that that's necessary. The

1 Union would have no objection to a cumulative question on this
2 subject. If that's the way it went for every one of the
3 ballots, then that's the way it went. But I think all of us
4 would like to move through this a little more expeditiously.

5 MR. CASEY: I can do that. I don't plan on going through
6 all 25 of the voters. So I'll just move on to the next
7 question.

8 Q BY MR. CASEY: Which was, what, if anything, did you
9 notice about the order that Board Agent Johnson was following,
10 Tom?

11 A Well, it was clear that he was going in reverse
12 alphabetical order, starting with Mr. Wooten, who is number 25
13 on the list, and he's going in reverse alphabetical order based
14 on the voter list I provided to the Board, as well as the other
15 parties.

16 Q Okay. Then the process that Mr. Johnson followed that you
17 described for Mr. Wooten, Mr. Vasquez, and Mr. Twitchell, did
18 Mr. Johnson follow the same procedure for the remaining yellow
19 and blue envelopes that were opened at the tally?

20 A Yes. He -- he -- the process that I just described for
21 Mr. Wooten, Mr. Vasquez, and Mr. Twitchell, he repeated that
22 same process for every -- every ballot that was received by the
23 NLRB -- or the Region 28. And --

24 Q At any point -- okay, thank you. At any point did Mr.
25 Johnson comingle any of the blue envelopes?

1 A No, he did not comingle any of the envelopes.

2 Q Okay. At any point did Mr. Johnson comingle any of the
3 actual ballots?

4 A No, he never comingled any of the ballots.

5 Q Okay.

6 MR. CASEY: I'd like to ask if the Regional Director
7 Exhibit Number 2 can be put up on the screen, please.

8 Q BY MR. CASEY: Tom, I'm showing you what's been admitted
9 into evidence as Regional Director Exhibit Number 2. And
10 specifically the second page, where the top of it's -- there's
11 a yellow envelope where it says "Identification stub". Is --
12 can you -- is -- is that the type of envelope that Mr. Johnson
13 put up to the screen as you described earlier?

14 A Yes, that is -- that is the type of envelope that he put
15 up to the screen.

16 Q Okay.

17 A And this is -- sorry.

18 Q Go ahead.

19 A No, this -- that -- that was an envelope that he put up to
20 the screen, yes.

21 Q Okay.

22 MR. CASEY: I'd like to take that down, please, and --

23 Q BY MR. CASEY: Let me ask you, Tom --

24 MR. CASEY: Thank you very much for taking that down.

25 Q BY MR. CASEY: But Tom, at the conclusion of the tally,

1 what, if anything, happened?

2 A After the tally of the ballots, Mr. Johnson stated that he
3 would be sending a tally of ballot form to sign off on. And
4 shortly thereafter, I received an email from Mr. Johnson with
5 the tally ballot form signed by Mr. Johnson, and he instructed
6 me to sign it and return to him --

7 Q Okay.

8 MR. CASEY: May I ask that Employer -- the exhibit marked
9 as Employer Exhibit 5 be brought up on the screen for the
10 witness, please.

11 Q BY MR. CASEY: Tom, I'm showing you what's been marked for
12 identification purposes as Employer Exhibit Number 5. Do you
13 recognize that document?

14 A Yes.

15 Q And what is it?

16 A That's the tally of ballots form that Mr. Johnson sent to
17 me May 24th.

18 Q Okay. And did you sign the document?

19 A I did not.

20 Q Why not?

21 A So if you go to the bottom of the document, above where I
22 was to sign on behalf of the company, it states that you
23 certify that counting of the -- and tabulating were fairly and
24 accurately done and that secrecy of the ballots was maintained.
25 And in this it was not. So I did not sign it.

1 MR. CASEY: The company moves for the admittance of
2 Employer Exhibit Number 5, which is the tally of ballots,
3 please.

4 HEARING OFFICER SCHULZE: Is there any objection to
5 Employer Exhibit 5? Mr. Solem?

6 MR. SOLEM: No objection.

7 HEARING OFFICER SCHULZE: Okay.

8 And Mr. Phillips? You're muted. Could you take yourself
9 on -- off mute? I know. I'm sorry. It's tough.

10 MR. PHILLIPS: No objection.

11 HEARING OFFICER SCHULZE: Okay.

12 And then, Mr. Scheid?

13 MR. SCHEID: The Regional Director's representative would
14 object, because the tally of ballots, because it was sent out
15 electronically to multiple parties, there are multiple pages,
16 some of which were signed by parties, and some of which were
17 not. So I would argue that this isn't complete. I'd be happy
18 to replace it with the complete tally of ballots that was
19 either signed or not signed by the parties who participated in
20 the tally.

21 HEARING OFFICER SCHULZE: Okay. And then, do you have
22 that, the replacement copy at your disposal right now, or would
23 you have to get it, and have time to get that?

24 MR. SCHEID: I -- I have the replacement copy.

25 HEARING OFFICER SCHULZE: Okay. And would it be entered

1 in as -- as Regional Director Exhibit 3; is that a plan?

2 MR. SCHEID: I would propose entering it as Regional
3 Director Exhibit 3. I'd have to send it to the parties real
4 quick.

5 HEARING OFFICER SCHULZE: Okay. Why don't we go through
6 and do that right --

7 MR. CASEY: Can I ask a -- rather than -- I'm just going
8 to ask this question. Rather than me having to go back over
9 with this witness, the same testimony about the tally of
10 ballots that he testified to in connection with the Employer 5,
11 this is the tally of ballots that was in the possession of this
12 witness. So we would still move for admittance of this. This
13 is what he received. And we have no objection to, you know,
14 for -- you know, we'd like to take a look at the document that
15 Mr. Scheid would like to put in. But we have, you know, we
16 don't have an objection to him putting in whatever is in Region
17 28's possession. But this is what was in this witness'
18 possession.

19 HEARING OFFICER SCHULZE: Okay. Fair enough.

20 Why don't we do this, why don't -- why don't you send
21 around the copies that you have, Mr. Scheid. And then, we'll
22 take a couple of minutes. I imagine it's a couple of pages
23 long. So we'll take a couple minutes. Everyone can review it.
24 It's 11:23 right now. So why don't we go off the record, and
25 then, return at 11 -- I know this is going to be an odd number,

1 like, 11:28. Does that work for everybody?

2 Okay. All right. So we'll go off the record.

3 (Off the record at 11:23 a.m.)

4 HEARING OFFICER SCHULZE: So on -- during an
5 off-the-record discussion, we did discuss the objections here.
6 And my understanding is that Mr. Scheid is going to withdraw
7 his objection; is that accurate?

8 MR. SCHEID: That's correct. Then, I'm -- I'm withdrawing
9 my objection to Employer's Exhibit 5.

10 HEARING OFFICER SCHULZE: Okay. And so hearing no
11 objections to Employer Exhibit 5, it has been admitted into
12 evidence.

13 **(Employer Exhibit Number 5 Received into Evidence)**

14 HEARING OFFICER SCHULZE: All right. You may continue,
15 Mr. Casey.

16 MR. CASEY: Okay.

17 **RESUMED DIRECT EXAMINATION**

18 Q BY MR. CASEY: Tom, as the result of what you observed
19 during the tally of ballots conducted by Mr. Johnson, what if
20 anything did you do after that?

21 A And -- the company filed a objection to the election on
22 June 1st of this year, 2021.

23 Q Okay.

24 MR. CASEY: Madam Hearing Officer, the -- my understanding
25 is that the objection filed by the Employer is -- is already

1 into evidence as Board Exhibit Number 1(c). And the notice of
2 hearing is already in evidence as Board Exhibit 1(d). And --
3 and based upon those documents being in evidence, we have no
4 further questions for Tom Casey on direct.

5 HEARING OFFICER SCHULZE: Yes. So let me do a little
6 clarification here. The -- I do have the objections in Board
7 Exhibit 1. They were included under, I think, it's 1(b).

8 MR. CASEY: I have -- I thought it was 1(c). I thought
9 1(b) was --

10 HEARING OFFICER SCHULZE: So 1 --

11 MR. CASEY: -- for the Director.

12 HEARING OFFICER SCHULZE: 1(c) I have as the affidavit of
13 service for the notice of hearing. So I think -- I believe
14 that the objections were attached to the notice of hearing.
15 But in any event, they are in Board Exhibit 1. So we'll
16 just --

17 MR. CASEY: Okay.

18 HEARING OFFICER SCHULZE: We'll just keep -- keep moving
19 ahead. And -- all right. Yep. Did you have any more
20 questions for Thomas Casey?

21 MR. CASEY: No further questions on direct for Thomas
22 Casey.

23 HEARING OFFICER SCHULZE: Okay. Great. Before we move
24 onto cross, we had also discussed off the record the Regional
25 Director's representative entering in Reg -- Exhibit 3, RD-3,

1 would you like to do that now?

2 MR. SCHEID: Yeah. So at this time, I'm offering what
3 I've marked as Regional Director's Exhibit 3. I've shared it
4 with the parties. I sent a copy to the court reporter.
5 Regional Director's Exhibit 3 is the tally of ballots that is
6 in our case file. So it would supplement Employer's Exhibit
7 Number 5, which was the tally that you received and did not
8 find. This would also -- Regional Director's Exhibit 3 would
9 contain the tally of signatures of other parties to the tally
10 of ballots, but not the Employer.

11 HEARING OFFICER SCHULZE: Thank you. Any objection to
12 Regional Director's Exhibit Number 3?

13 Any from the Employer?

14 MR. CASEY: No objections.

15 HEARING OFFICER SCHULZE: Thank you.

16 Any from the Petitioner?

17 MR. SOLEM: No objection.

18 HEARING OFFICER SCHULZE: Thank you.

19 And any from the Union?

20 MR. PHILLIPS: No.

21 HEARING OFFICER SCHULZE: Great.

22 So Regional Director Exhibit Number 3 is admitted into
23 evidence.

24 **(Regional Director Exhibit Number 3 Received into Evidence)**

25 HEARING OFFICER SCHULZE: Okay. So now, we'll move on to



1 cross-examination of Mr. Thomas Casey. And let's start with
2 the Petitioner getting a chance to cross-examine. And then,
3 we'll move to the -- I'm sorry, wait. You're looking at me
4 like I'm --

5 MR. SOLEM: I have no -- I have no questions.

6 HEARING OFFICER SCHULZE: Okay. Perfect.

7 So then, we'll move to Mr. Phillips from the Union. Do
8 you have any questions for Mr. Casey?

9 MR. PHILLIPS: Yes, I do, a couple.

10 HEARING OFFICER SCHULZE: Okay. And you may begin when
11 you're ready.

12 MR. PHILLIPS: Oh, okay. Thank you. I'm trying to make
13 sure I wasn't muted.

14 **CROSS-EXAMINATION**

15 Q BY MR. PHILLIPS: Thomas, you can hear me okay? Sorry.

16 A Yeah, I can hear you okay.

17 Q All right. Thank you. Right. Just could of questions.
18 And I want to understand what you said earlier. So as I
19 understand looking at both the Regional Director Exhibit 3 and
20 the Employer Exhibit 5, the only party who did not sign off on
21 the tally was you; is that right?

22 MR. CASEY: Objection.

23 A I --

24 MR. CASEY: He can -- he can testify to what he did,
25 not -- can't testify to what others did. And the --

1 MR. PHILLIPS: But he can testify as to what he saw.

2 MR. CASEY: That's already in the record. That the
3 document is in the record without objection as to what the
4 other parties did with the tally of ballots. He can testify to
5 what he did, but he can't testify as to what they did.

6 MR. PHILLIPS: He can testify as to what he saw with his
7 eyes.

8 HEARING OFFICER SCHULZE: Okay. Let me jump in here.
9 And -- and maybe it's my confusion.

10 Are you eliciting testimony -- are you trying to elicit
11 testimony of what's in Regional Director's Exhibit 3?

12 MR. PHILLIPS: Well, that document speaks for itself.
13 And -- and I can move on.

14 HEARING OFFICER SCHULZE: Oh, so -- so you're going to
15 withdraw the question and -- and keep moving?

16 MR. PHILLIPS: I can.

17 HEARING OFFICER SCHULZE: Okay. Let's keep going, then.

18 MR. PHILLIPS: Okay.

19 Q BY MR. PHILLIPS: Do you remember if you said during the
20 course of that videoconference, when you were asked by Mr.
21 Johnson to sign the tally, that you were unable to do that from
22 your location? That you couldn't scan it and send it back at
23 that time?

24 A I stated that I would -- I would receive it and I would
25 take a look at it. But I could not return it to him right then

1 at that time..

2 Q Okay.

3 A And I --

4 Q If -- is that -- is that everything you said?

5 A I recall telling him I would take a look at it. And I
6 would review it. But I could not return it to him at that
7 time.

8 Q Is that everything you recall saying?

9 A That's everything I recall saying, yes, regarding it --
10 returning of the -- the tally of ballots.

11 Q Okay. You -- did you recall the -- the exchange between
12 you and Mr. Johnson about -- about your request for a list of
13 names and matching numbers, or for something to that effect?

14 A Yes, I do.

15 Q Can you tell -- tell me what you asked Mr. Johnson to do?

16 A I asked Mr. Johnson for a voter list with corresponding
17 numbers along the side.

18 Q And did he already --

19 A And he'd already --

20 Q I'm sorry?

21 A With a voter list with the numbers that would go alongside
22 with it. But the -- Mr. Johnson had -- the Region had not
23 provided a voter list at that time to the parties. And I was
24 inquiring as to what voter list we were going off of for this
25 tally? And -- and I've requested one from him.

1 Q And you said you had no voter list provided by the Region.
2 The voter list you had was the one that you had provided to the
3 Region?

4 A That's correct.

5 Q Okay. Yeah. And that had numbers?

6 A The voter list I provided to the Region did not have
7 numbers.

8 Q I'm -- I'm sorry, I couldn't hear the answer.

9 A The voter list that I provided to you, as well as the
10 Region, did not have numbers.

11 Q Did not have numbers? I -- I understand. Okay. So why
12 did you make that request of Mr. Johnson?

13 A Well, I had previously attended a -- an election. And
14 about three days before, I've -- I tallied ballots. I
15 apologize. And I mailed out an election. And about three days
16 before that tally was conducted, the Region emailed all of the
17 parties a copy of the voter list, along with a number that went
18 from -- corresponded to the alphabetical name, so I -- I -- you
19 know, A was 1, all the way through to the last person. And
20 what we did was, we took that voter list, and we went through
21 every single exterior envelope first. So we would look through
22 and we'd look at voter number 1, and that person's signature on
23 the back confirmed the signature and confirmed the date was
24 received by the Board. And then, we were able to then have
25 that, in case there was a challenge by any party to then set

1 it -- that envelope could be set aside. That Board agent then,
2 after going through all of those exterior envelopes and removed
3 the internal blue envelope, comingled all those blue envelopes,
4 and then, opened each individual blue envelope, removed the
5 ballot, set those aside, comingled those. And then, ultimately
6 showed each ballot after having comingled those to the parties.
7 So we were going off a set list that had a number that went
8 along, so that if there was going to be an objection, at the
9 time, or challenge those. If there was going to be a challenge
10 to a ballot we'd be able to know which ballot we were
11 challenging before it was revealed to the parties.

12 Q And that was the information that you had in your head at
13 the time you made that request of Mr. Johnson; is that correct?

14 A That was my understanding of how the -- the election was
15 to be conducted.

16 Q And so you made that request of Mr. Johnson. And then, he
17 said, no?

18 A That's correct.

19 Q Did he say why?

20 A I don't recall specifically why he said why. I think he
21 said he didn't want to show the -- the numbers of who -- I
22 don't recall specifically.

23 HEARING OFFICER SCHULZE: Hold on one moment here. So --
24 okay, now -- so the video on you is going pretty dark. And I
25 couldn't if the lights --

1 THE WITNESS: Oh, sorry.

2 HEARING OFFICER SCHULZE: -- had turned off in your
3 office, or --

4 THE WITNESS: In mine?

5 HEARING OFFICER SCHULZE: -- if it was -- yeah, in yours?

6 THE WITNESS: I can move over this way.

7 HEARING OFFICER SCHULZE: Okay. Let's -- let's try it
8 from there and see if the video remains of the same quality the
9 whole time.

10 Back to you, Mr. Phillips.

11 MR. PHILLIPS: Thank you.

12 Q BY MR. PHILLIPS: So he said, no. And you don't remember
13 if he said why?

14 A He said something to the effect that he didn't want to
15 show the numbers of it, then, the individuals.

16 Q Okay. Now, when the tally then began to be conducted in
17 the manner that you've already described in your direct
18 testimony, did -- did you at some point say, hey, wait a
19 minute, now we all know how each other voted, did you raise any
20 objection to that process?

21 A During the tally of ballots, I did not raise any
22 objection.

23 Q Okay.

24 MR. PHILLIPS: That's all I have. Thank you.

25 HEARING OFFICER SCHULZE: Thank you.



1 And then, if Mr. Kevin Casey -- oh, hang on a second. Let
2 me ask real quick.

3 Mr. Scheid, did you have any questions that you wanted to
4 ask here?

5 MR. SCHEID: I -- I have a couple of follow-up questions,
6 just for clarification.

7 HEARING OFFICER SCHULZE: Okay. Go ahead.

8 CROSS-EXAMINATION

9 Q BY MR. SCHEID: You had testified that you had with you
10 the voter list that you had sent to the parties and to the
11 Region, the one that did not have any key numbers on it during
12 the tally?

13 A I don't believe I testified to that.

14 Q Well, I -- here, I'll just show you. I'm pulling up
15 Employer's Exhibit 4. Let me know when you can see it.

16 A Yes, I can see it.

17 Q Okay. And I'm scrolling to the second page, and the third
18 page, and the fourth page of Employer's Exhibit 4. Is this the
19 voter list version that you had with you during the election --
20 or during the tally of ballots?

21 A I -- I -- I did have that present during the tally of
22 ballots, my voter list.

23 Q When Mr. Johnson held up the exterior yellow envelopes,
24 does he describe -- how long did he hold them up?

25 A I don't recall specifically. I mean, it varied from each

1 envelope.

2 Q Was it a second, a few seconds?

3 A I would say it was a few seconds.

4 Q And did he show each side for a few seconds, or was it a
5 few seconds total for each yellow envelope?

6 A I don't recall specifically. But he would show the front
7 side and the rear side.

8 Q Then, with the blue interior envelopes, did he hold those
9 up to the camera for each ballot?

10 A He did remove the blue envelopes. And he didn't hold them
11 up as nearly as long as the yellow envelopes. But he -- he
12 removed them and then opened them.

13 Q And then after he opened the blue envelope, did he hold up
14 the ballots to the camera so that you could see them?

15 A Yes, he did.

16 Q How long did he hold up the ballots?

17 A The ballots? Well, he first read up the ballots stated.
18 And then, held it up to the camera.

19 Q Did he hold those up for more time, or less time, than he
20 held up the yellow envelopes?

21 A It -- it varied. As we are make -- if we would requested
22 another second to look at it, then he would hold it up longer.
23 But I would say just a couple of seconds.

24 Q Did you have any other documents with you when you
25 observed the tally of ballots, other than the voter list that's

1 contained in Employer's Exhibit 4?

2 MR. CASEY: Objection. I'm going to object. Because it's
3 requesting attorney work product.

4 HEARING OFFICER SCHULZE: I'm sorry?

5 Q BY MR. SCHEID: Well, I wasn't -- I wasn't seeking any
6 attorney work product. So there is -- if you did have attorney
7 work product related documents in front of you during the
8 election? I'm not -- I'm not asking that. I'm asking if you
9 had anything that -- in addition to the voter list that you
10 used to follow the vote count?

11 A In addition to voter list, I -- I took notes. If that's
12 what you're asking?

13 Q Did you have any document that showed the signatures of
14 the employees in the bargaining unit at that time?

15 A No, I did not.

16 Q But you recognize those signatures of, I think you
17 testified to Michael Wooten, John Vasquez, and Bruce Twitchell?

18 A Yes. As I said, you could see the signature and then the
19 number right below that person's name. So you'd be able --
20 sorry, Mr. Wooten was number 25. You could see both.

21 Q But you do --

22 A You could see both.

23 Q Did you recog -- both recognize Mr. Wooten's signature?
24 And then, could also see that he was number 25?

25 A That's correct. You could see that Mr. Wooten was number

1 25. And you could see his signature above that.

2 Q But you didn't have the -- the voter list that you had
3 requested from Mr. Johnson that would've had the -- the key
4 number for each eligible voter on it; isn't that correct?

5 A That's correct.

6 Q So what you saw was a number and a signature?

7 A Yes. And there were 25 voters. And -- so Mr. Wooten was
8 up, and he was number 25.

9 Q Had you seen his signature before this, ever?

10 A I don't recall having seeing Mr. Wooten's signature prior
11 to this.

12 Q How did you know it was his signature?

13 A Again, I could see their signature and that below it was
14 the number 25. So you could see both, Mr. Wooten's signature,
15 as well as the 20 -- the 25 below it.

16 Q Okay. But have you been --

17 A But Mr. Johnson went to the next name, John Vasquez, that
18 name was number 24. And then, after that was Mr. Twitchell,
19 Bruce Twitchell. And that was number 23.

20 Q But you -- had you seen any of the signatures that you
21 identified before the tally of ballots?

22 A Prior to this, I don't recall having seeing any of their
23 signatures.

24 Q And you've never seen a voter key list with the number
25 that would be tied to each voter who submitted an envelope?

1 A I have. Previous -- in the previous election, I did see
2 one.

3 Q But in this one, Mr. Johnson refused to give it to you?

4 A That's correct.

5 Q Okay. So you don't know what voter was assigned what key
6 number for certain?

7 A No, I could. Because you could see the name and then you
8 could see the number. And Mr. Johnson, while he was reviewing,
9 going through each ballot, each exterior envelope, he was going
10 in reverse alphabetical order, and going from 25 to 1,
11 sequentially.

12 Q So you're -- you're sort of connecting the dots here? You
13 didn't actually have a voter key list that said, for example,
14 that Mr. Vasquez was number 24? You're just assuming that
15 since the count went backwards and there was a 24 next to what
16 you are saying is his signature, that he was number 24?

17 A No. Not only could I see his signature, but also it was
18 in order from 25 to 1, the numbers. So in addition to seeing
19 the number on the bottom, you could see the corresponding
20 signature above.

21 Q Okay. In the prior election tally of ballots that you
22 participated in, when you received the voter list from the
23 Board agent who conducted a tally, was it -- did it have key
24 numbers assigned to each eligible voter?

25 A It did.

1 Q But you didn't see that here?

2 A No, it was not provided.

3 Q Okay.

4 MR. SCHEID: That's -- those are the only questions that I
5 had to ask.

6 HEARING OFFICER SCHULZE: Thank you.

7 So we'll go back on redirect. Mr. Kevin Casey, do you
8 have any additional questions at this time?

9 MR. CASEY: Yes, I do.

10 **REDIRECT EXAMINATION**

11 Q BY MR. CASEY: Tom, counsel for Region 28 asked you about
12 Michael Wooten. You said there were three people. I think you
13 mentioned Bruce Twitchell and John Vasquez. So my question to
14 you is, you said that -- could you read John Vasquez's
15 signature?

16 A Yes, I could.

17 Q Was it legible?

18 A It was legible.

19 Q And how about Bruce Twitchell's signature, was that
20 legible?

21 A Yes, I recall that being legible.

22 Q Did you need the numbers to understand and see who signed
23 those envelopes, Twitchell and Vasquez?

24 A No, I did not.

25 Q Okay. And you said that Mr. -- well, let me ask you a



1 question. Counsel, I believe for the Union, asked you about
2 whether you objected or not at the hearing. And you said you
3 did not object at the hearing. Why did you not object at the
4 hearing? At the tally of --

5 HEARING OFFICER SCHULZE: Hold on one moment.

6 MR. CASEY: Excuse me.

7 HEARING OFFICER SCHULZE: I know that you're going to
8 clarify that the objections of the tally of ballots and not at
9 any pre-election hearing. But I just -- it looked like Mr.
10 Phillips was about to raise an objection. So before Mr. Thomas
11 Casey answers, I want to give him a chance to --

12 MR. PHILLIPS: Thank you. I -- I was -- thank you. I was
13 merely inadvertently correcting Kevin Casey's use of the word
14 hearing. But I know he meant the word tally, so. I have no
15 objection to the questioning.

16 HEARING OFFICER SCHULZE: Okay.

17 Mr. Thomas Casey, go ahead and answer the question. If
18 Mr. Kevin Casey needs to ask it again, that's fine.

19 MR. CASEY: I would like to ask it again.

20 Q BY MR. CASEY: At the tally of ballots conducted by Mr.
21 Johnson, you said that you did not object at the hearing. Why
22 did you not object at the hearing?

23 A At the time during the tally itself, I didn't know if we
24 had a -- a legal basis to object.

25 HEARING OFFICER SCHULZE: Okay.

1 MR. CASEY: Okay. No further --

2 HEARING OFFICER SCHULZE: I just want to jump in and just
3 say, I think you said the hearing again, and you meant to say
4 tally of ballots. So that anytime --

5 MR. CASEY: And I -- I thought that time is said -- I said
6 tally.

7 HEARING OFFICER SCHULZE: You started -- you started out
8 right with tally, and then -- and then, switched back to
9 hearing. So anytime I read it --

10 MR. CASEY: So there's --

11 HEARING OFFICER SCHULZE: I'm going to -- I'm going to
12 assume.

13 MR. CASEY: Well, I appreciate that. I appreciate it.

14 HEARING OFFICER SCHULZE: Yeah, it --

15 Q BY MR. CASEY: So there's no confusion, Mr. Casey, Tom
16 Casey, at the tally of ballots conducted by Mr. Johnson, you
17 did not object; is that correct?

18 A At the tally, I did not object.

19 Q And why did you not object at the tally of ballots?

20 A During the tally itself, I did not know whether we would
21 have -- we had a legal basis to object.

22 MR. CASEY: Thank you. No further questions on redirect.

23 HEARING OFFICER SCHULZE: Okay. So we'll move to recross.
24 Does anyone have questions on recross?

25 I'm looking at -- at Mr. Solem, you didn't cross

1 initially. I don't think that you had anything there.

2 So Mr. Phillips, we'll start with you. Do you have any
3 additional questions here?

4 MR. PHILLIPS: I do not.

5 HEARING OFFICER SCHULZE: Okay. Great.

6 And Mr. Scheid, any questions?

7 MR. SCHEID: None for me.

8 HEARING OFFICER SCHULZE: Okay. Thank you.

9 I don't have any questions at this time. So Thomas Casey,
10 you may step down, but please, stay around in case we have to
11 recall you. So you'll go off video.

12 And then, Employer, do you have a second witness to call
13 today?

14 MR. CASEY: Do I -- I'm going to call Mr. Scully. But I
15 would like to just take a couple of minutes to make sure that
16 I -- I have the appropriate numbers on documents that I want to
17 have him refer to.

18 HEARING OFFICER SCHULZE: Okay. And do you want to do
19 that off the record, then; is that what you're asking?

20 MR. CASEY: Yeah, I'd like to do it off the record for a
21 few minutes. If I could have, like, ten minutes to do that?
22 I'd appreciate it.

23 HEARING OFFICER SCHULZE: Okay. Is that good with
24 everybody else here? Yep. Okay. Thumbs up.

25 All right. So we'll go off the record now. It's 11:55.



1 Come back at 12:05. Thank you.

2 MR. CASEY: Thank you.

3 (Off the record at 11:55 a.m.)

4 HEARING OFFICER SCHULZE: Okay. Back on the record.

5 Okay.

6 And Mr. Kevin Casey, you may call your second witness.

7 MR. CASEY: Thank you. The company calls John Scully as a
8 witness.

9 HEARING OFFICER SCHULZE: Mr. Scully, go ahead and raise
10 your right hand.

11 Whereupon,

12 **JOHN SCULLY**

13 having been duly sworn, was called as a witness herein and was
14 examined and testified as follows:

15 HEARING OFFICER SCHULZE: Great. Please state your first
16 and last name and spell for them the record.

17 THE WITNESS: John, J-O-H-N, Scully, S-C-U-L-L-Y.

18 HEARING OFFICER SCHULZE: Thank you.

19 Mr. Casey, you may begin.

20 **DIRECT EXAMINATION**

21 Q BY MR. CASEY: Hi. Mr. Scully, I just wanted to first ask
22 you if you were subpoenaed by the Employer to appear here
23 today?

24 A I was.

25 Q Okay. And where are you currently employed?



1 A For the National Right to Work Legal Foundation -- Legal
2 Defense Foundation.

3 Q Okay. And where -- what geographic location do you work
4 at?

5 A Springfield, Virginia.

6 Q Okay. And what is your job title?

7 A I'm a staff attorney.

8 Q Okay. And where are you admitted to practice?

9 A Missouri.

10 Q Okay. How long have you been employed at the Right to
11 Work Legal Foundation?

12 A I was hired about 40 years ago. I took about a three-year
13 break in the middle -- not in the middle, towards the
14 beginning.

15 Q Okay. And just briefly, in a couple of sentences, what
16 are your job responsibilities --

17 A We get calls --

18 Q -- as a staff attorney?

19 A We get calls or emails from workers who are having
20 problems with unions. We evaluate it. If it's a -- one of the
21 issues we handle, compulsory unionism, then we offer free legal
22 assistance. Sometimes, I informally advise people. Sometimes,
23 I enter as their representative, as their attorney in
24 proceedings.

25 Q Are you familiar with the decertification petition filed

1 in this matter, NLRB case number 28-RD-274741?

2 A Yes, I am.

3 Q Okay. And can you explain for the Hearing Officer how
4 you're familiar with this matter?

5 A One of the other attorneys in our office initially spoke
6 with Mr. Morales and assisted him, I believe, in -- in filling
7 out the blanks on a petition, that sort of thing. That other
8 attorney had to step away because he had some fra -- -- some
9 either work problems that he had to -- was buried in or some
10 private problem and asked me to take over. I did. I filed a
11 notice of appearance and then responded to the Employer
12 position paper, but the Union didn't file a position paper.
13 And then I rep -- continued to represent Mr. Morales from then
14 on.

15 Q Okay, earlier, and unless you need me to show it to you,
16 you heard Thomas Casey testify to a stipulated election
17 agreement that the parties signed; did you sign that --

18 A Yes.

19 Q -- on behalf of the Petitioner?

20 A I did.

21 Q Okay. Did you attend the tally of ballots on May 24th,
22 2021 --

23 A Yes, I did.

24 Q -- that Thomas Casey testified about?

25 A Yes, I did.



1 Q Okay.

2 HEARING OFFICER SCHULZE: For the -- I think for the
3 record, let -- let the question be finished before you answer,
4 because I don't want there to be any -- any problems with the
5 transcript.

6 THE WITNESS: I'm not used to is being a witness.

7 HEARING OFFICER SCHULZE: Okay.

8 Q BY MR. CASEY: Okay. So one -- I'll just repeat the last
9 question. Did you attend the May 24th, 2021 tally of ballots
10 conducted by Mr. Johnson in this matter?

11 A Yes, I did.

12 Q Okay. And you attended by videoconference on Zoom
13 platform.

14 A Yes, I did.

15 Q Okay. And you -- did you attend in the capacity as Mr.
16 Morales's attorney?

17 A Yes, I did.

18 Q Okay. Do you remember who was present besides yourself at
19 that video conference?

20 A The Hearing Officer, Mr. Johnson, the -- Thomas Casey, and
21 Steve Ross.

22 Q Okay. And --

23 A And Victor -- Victor Morales was also attending.

24 Q Thank you.

25 A Can you please explain to the Hearing Officer what

1 occurred at the tally of ballots that Mr. Johnson conducted
2 from the beginning and through what you witnessed about how he
3 proceeded through each ballot?

4 A Certainly. I think slightly before the -- the ballot
5 count, he indicated that he had only done one mail ballot in his
6 20 years experience. And he seemed a little uncertain as to
7 what he was doing throughout the procedure. In any event, he
8 would pull up the yellow envelope, showed the front, showed the
9 back, so that the signature was clearly legible. He then took
10 out the blue envelope below. But instead of setting it aside,
11 as is typically been done in all of the Zoom vote tallies that
12 I've attended during this COVID period, he -- instead of
13 putting them in a separate pile and then shuffling them, he
14 immediately read -- read the result of the vote, showed the
15 vote, and then set it aside.

16 Q Okay. And did he do that for each of the yellow envelopes
17 that he opened; did he follow the same procedure?

18 A Yes. He followed the exact same procedure.

19 Q Okay. And as a result, did those in attendance learn how
20 voters voted, whether the -- without saying who, but did they
21 learn who voted yes or no?

22 MR. SCHEID: Objection. That calls for speculation.

23 MR. PHILLIPS: Same objection.

24 HEARING OFFICER SCHULZE: What was the question again? I
25 got kicked -- like, I got a Zoom pop-up right when you --

1 MR. CASEY: So --

2 HEARING OFFICER SCHULZE: -- asked that question, saying
3 that I was getting signed out. And I don't think that you guys
4 got anything on your end, but I actually didn't hear the
5 question.

6 MR. CASEY: I'll strike the question.

7 HEARING OFFICER SCHULZE: Okay.

8 MR. CASEY: Okay. I don't have any further questions at
9 this time.

10 HEARING OFFICER SCHULZE: Okay. Mr. Solem, do you have
11 any questions?

12 **CROSS-EXAMINATION**

13 Q BY MR. SOLEM: Hi, Mr. Scully. Can you hear me, John?

14 A Yes.

15 Q Okay. When you saw the envelopes, were the signatures
16 legible?

17 A Definitely. Although I was not familiar with each
18 individual's names, I could read a name -- just as I can read a
19 name out of a phone book. I could read those names.

20 Q Okay. Were they all legible?

21 A No. I -- I should have not said I could read all of those
22 names. Some of them were a little harder to read. How many?
23 I don't know.

24 MR. SOLEM: No further questions.

25 HEARING OFFICER SCHULZE: Thank you.

1 Mr. Phillips, do you have any questions for Mr. Scully?

2 MR. PHILLIPS: No, thank you.

3 HEARING OFFICER SCHULZE: Okay. And Mr. Scheid?

4 MR. SCHEID: Just want a couple of questions.

5 **CROSS-EXAMINATION**

6 Q BY MR. SCHEID: We -- you were here listening to the prior
7 testimony; did you have a copy of the voter list that was
8 served by the Employer with you --

9 A No.

10 Q -- during the ballot count?

11 A No, I didn't have a copy of the voter list.

12 Q Okay. So you didn't have with you the names or identities
13 of any of the voters --

14 A I was --

15 Q -- to follow up?

16 A I focused on counting -- counting the ballots. I have to
17 say, when the first ballot was shown, I was shocked after
18 having sat through about a number of these Zoom vote tallies.
19 I was shocked at what happened, but I just focused on what was
20 the vote count.

21 Q Okay. But he didn't say anything when that happened
22 during the tally, right?

23 A No. A, I was so shocked. I was -- at first and then
24 after -- and then after one or two more where it happened, I
25 figured the cat was already, you know, left out of the bag, so

1 to speak. And so there was -- it was --

2 Q So I just want to make --

3 A I was going to reserve any objection for later.

4 Q I just want to make sure that the answer to the question
5 is in the record. I just wanted to make sure. Did you say
6 anything during the tally of ballots?

7 A No, I did not.

8 Q Okay. And when Mr. Johnson held up the yellow envelope,
9 do you remember how long he held up the front of the envelope
10 for the web cam?

11 A I'm not good at timing. They were long enough to be able
12 to read them.

13 Q But --

14 A So whether that's two seconds, five seconds or ten
15 seconds, you got me beat.

16 Q Okay. Did you -- could you read any of the signatures as
17 he was holding them up; can you recall any of the names of
18 employees?

19 A I -- I could not recall any names.

20 Q And you --

21 A I have not -- you know, that was, what, a month-and-a-half
22 ago. You know? That's --

23 Q Had you ever -- had you ever seen the signatures before
24 this --

25 A No, I -- I had not. But most of them were as legible as,

1 you know, a signature in a phone book. So you could read it,
2 definitely.

3 0 Okay.

4 A Most of them. There were a couple that were, you know,
5 closer to scribbles than clear handwriting.

6 MR. SCHEID: Okay. That's all the questions I had.

7 HEARING OFFICER SCHULZE: Okay. Thank you. And then
8 we'll go back on redirect to Mr. Casey.

9 Do you have any questions?

10 MR. CASEY: No questions on redirect.

11 HEARING OFFICER SCHULZE: Okay, great. So Mr. Phillips,
12 it looks like you're raising -- you're getting my attention?

13 MR. PHILLIPS: Yes, trying to thank you. I just quickly,
14 cross-examination, raised a question that I now have for Mr.
15 Scully, if that's all right?

16 HEARING OFFICER SCHULZE: That's fine by me. Go ahead.

17 MR. PHILLIPS: Thank you.

18 **CROSS-EXAMINATION**

19 Q BY MR. PHILLIPS: Mr. Scully, you -- you attended the
20 tally on behalf of Mr. Morales; is that right?

21 A That's correct.

22 Q And when you saw what you saw, you were so shocked that
23 you were unable to counsel Mr. Morales not to sign the tally
24 certifying that it was fair --

25 A I -- I signed --

1 Q -- is that right?

2 A I signed the tally. And to be quite honest, I did not
3 read it carefully. I did not look for language about secret
4 ballot. I did not notice that. I signed it because it showed
5 the vote count, and that was the vote count. So I did not
6 carefully read it. That was a mistake on my part, I guess.
7 It's -- it's a -- it's a -- it's a lesson to me to be
8 careful -- more careful when I sign.

9 Q You saw a tally signed by Mr. Morales, did you not, in
10 this hearing?

11 A If -- if he did, I -- I don't -- I don't recall, to be
12 quite honest.

13 MR. CASEY: Objection. I'm not sure that accurately
14 represents the record, Ralph -- Mr. Phillips. If there's a
15 document that you're referring to, then perhaps you can direct
16 the witness's attention to that, because I'm not sure.

17 MR. PHILLIPS: Okay. Could we possibly see -- I don't
18 recall who's doing the sharing here, but if we could see
19 Regional Director's 3, maybe that would be useful.

20 HEARING OFFICER SCHULZE: And this is going to be page 2.

21 MR. PHILLIPS: Yes, thank you.

22 Q BY MR. PHILLIPS: Mr. Scully, can you -- can you see that
23 page of the exhibit?

24 A Yeah. That is my signature, not Mr. Morales's signature.

25 Q Well, underneath, where it says, for Victor Morales, that

1 is your signature?

2 A That's correct.

3 Q Okay. I'm sorry. I just couldn't read it. Perhaps you
4 could tell me whether you have signed other tallies for other
5 clients in the past?

6 MR. CASEY: Objection. Irrelevant.

7 HEARING OFFICER SCHULZE: I mean --

8 MR. PHILLIPS: The witness testified that he didn't --

9 HEARING OFFICER SCHULZE: Hang on, hang on, hang on.
10 You were going to say something, Mr. Scheid.

11 MR. SCHEID: I would join the objection.

12 HEARING OFFICER SCHULZE: And Mr. Phillips, what were you
13 going to say?

14 MR. PHILLIPS: The witness has testified that he has
15 served many clients in this capacity. And I'm testing his
16 credibility as to the fact that he never read the statement
17 that he was certifying to on this tally.

18 HEARING OFFICER SCHULZE: I believe what he said is that
19 he didn't read it here. I'm not sure how many of these you
20 find is going to go to it, because we do see here that he did
21 sign this one. So I -- I'm going to sustain the objection as
22 the question being irrelevant as to how many he's previously
23 signed or read. And I'd like to keep moving on.

24 MR. PHILLIPS: All right. Given the fact that you're
25 sustaining the objection, I'm stating an exception to that.

1 But I will withdraw the question at this time.

2 HEARING OFFICER SCHULZE: Okay, thank you. Did you have
3 any additional questions at this point?

4 MR. PHILLIPS: I do not.

5 HEARING OFFICER SCHULZE: Okay. Mr. Casey, it looks like
6 you just came off mute there.

7 MR. CASEY: I came off mute in case you were going to ask
8 me a question that I had to answer.

9 HEARING OFFICER SCHULZE: Oh, okay. Well, I was assuming
10 that you want -- didn't want to do a redirect; is that still
11 accurate?

12 MR. CASEY: That is accurate. I am -- no redirect at this
13 moment.

14 HEARING OFFICER SCHULZE: Okay. And it seems to me that
15 everybody's finished with their questions of Mr. Scully. But
16 you know, give me a wave if you're not. Okay.

17 So Mr. Scully, thank you for being here today. Please
18 stay on the Zoom call in case we have to recall you, and we'll
19 keep -- we'll keep moving on.

20 At this point, let's chat a moment on where we're going to
21 go from here. I wanted to go to the Petitioner for their -- to
22 present their witness. I understand, Mr. Solem that you have a
23 con -- you have a conflict coming up and you have to leave
24 within the hour here.

25 MR. SOLEM: Yeah, so in the next 40 minutes. But we can



1 call Mr. Morales now.

2 HEARING OFFICER SCHULZE: Okay. And you're -- you --
3 okay. You think we have time. All right.

4 MR. SOLEM: Yeah, yeah. I don't think we're going to take
5 long as -- Scully took, you know, ten minutes. I don't think
6 it'll take longer than that.

7 HEARING OFFICER SCHULZE: Okay. So Mr. Morales, please go
8 on video now so that we'll see you.

9 I can see that he is -- he's in the participant list.

10 MR. MORALES: Yes, I'm here.

11 HEARING OFFICER SCHULZE: Okay, great. Mr. Morales, go
12 ahead and raise your right hand.

13 Whereupon,

14 **VICTOR MORALES**

15 having been duly sworn, was called as a witness herein and was
16 examined and testified as follows:

17 HEARING OFFICER SCHULZE: Okay. Please state and spell
18 your first and last name for the record,

19 THE WITNESS: My first name is Victor, V-I-C-T-O-R, last
20 name Morales, M-O-R-A-L-E-S.

21 HEARING OFFICER SCHULZE: Okay. Mr. Solem, your witness.

22 MR. SOLEM: Okay.

23 **DIRECT EXAMINATION**

24 Q BY MR. SOLEM: Hi, Mr. Morales. How are you? Can you
25 hear me?

- 1 A Good afternoon -- good afternoon, sir.
- 2 Q So, Mr. Morales, where do you work?
- 3 A I work for Fox Television Stations.
- 4 Q How long have you worked there?
- 5 A Since 1999 -- actually, April 1999. So that would be
- 6 about 20, almost 21 years --
- 7 Q And current --
- 8 A -- I believe.
- 9 Q Go finish -- go ahead. What were you going to say? Keep
- 10 going.
- 11 A Yeah, just almost 21 years -- 21 years, yeah.
- 12 Q Okay. Currently, are you represented by a union at your
- 13 workplace?
- 14 A Yes. Yeah, the union is NAB Local 53. I believe it's
- 15 based in San Francisco.
- 16 Q Okay. And were you involved in a decertification election
- 17 regarding Local 53?
- 18 A Yes.
- 19 Q Yes. And in what capacity were you involved?
- 20 A I was one of the main participant to collect the signature
- 21 for the certification (sic).
- 22 Q Okay. Did you collect all the signatures on the showing
- 23 of interest for the decertification petition?
- 24 A Can you repeat the question, please?
- 25 Q Did you collect all of the signatures on the showing of

- 1 interest to -- to the decertification petition?
- 2 A You mean all the signatures?
- 3 Q Yes, all the signatures.
- 4 A How many --
- 5 Q Excuse me. Let me rephrase the question.
- 6 A How many signatures.
- 7 Q How many signatures were collected? How many did you
- 8 collect?
- 9 A Nine.
- 10 Q Nine. And how many of them did you collect?
- 11 A Nine.
- 12 Q Nine, okay. So you collected all of them.
- 13 A Could you go back to the question again, please? How many
- 14 did I collect pers --
- 15 Q Oh, okay.
- 16 A -- personally or other -- or other people --
- 17 Q Person -- Personally. How many did you collect personally
- 18 on the decertification petition?
- 19 A I believe about five.
- 20 Q Five, okay. Did you see the other -- other four who
- 21 signed it?
- 22 A Yes, I did.
- 23 Q Okay, you saw the other four, okay. So you saw all the
- 24 signatures on the petition?
- 25 A Say it again, please.

1 Q You saw all the signatures on the petition?

2 A Yes.

3 Q Yes, okay. And as part of this decertification election,
4 was there a tally of ballots?

5 A There was.

6 Q There was. When did the tally of ballots occur?

7 A May 24th, 31 -- 1300 hour.

8 Q Okay. How was it conducted, was it in person, was it
9 online?

10 A It was done by Zoom videoconference.

11 Q Okay. And who was on the Zoom videoconference?

12 A If I recall right, my representative, Mr. John Scully, the
13 Employer lawyer, Thomas Casey, Mr. Steve Ross, representative
14 of the Union Local 53, and also Mr. Michael Johnson, who is the
15 representative of the National Labor Department.

16 Q The National Labor Relations Board?

17 A Yes.

18 Q Okay. So could you describe -- and who -- did they -- who
19 conducted the tally of ballots, who counted the ballots?

20 A Mr. -- Mr. Michael Johnson.

21 Q Okay. Can you describe -- now let me ask you, were you on
22 the Zoom call the entire count of ballots?

23 A That's negative.

24 Q That's a neg -- okay, so no. Like, how -- how long you
25 were on the tally of ballots for?

1 A It's kind of hard to recall the time because I was -- I
2 was really surprised. I'm sorry, but I can't really give you
3 time. I don't know.

4 Q Okay. Do -- do you know -- but -- but is it safe to say
5 that you got cut off at some point?

6 A I did.

7 Q Okay. And after you were cut off, did you try to get back
8 on the Zoom hearing?

9 A I did.

10 Q Okay. And did you get back on?

11 A No.

12 Q Okay. About how many ballots did you see, Mr. Johnson
13 tally?

14 A I have to say just about between five -- I would say
15 about -- by around five.

16 Q Around five, okay. Can you describe the process of how he
17 would tally those ballots?

18 A The process took place on May 24th. Mr. Johnson was the
19 main tally representative. And he notified everybody that
20 there was one, is what I recall really well. There was one
21 missing signature. Then he proceeds to explain the process,
22 then he went and grabbed yellow envelopes, in this case just
23 one -- one at a time. Then he went and showed that particular
24 yellow en -- envelope in front of the camera, to everyone,
25 first the front then the back. The back had a signature and

1 also a number.

2 Q After -- after he would show you the back with the
3 signature and the number, what would he do then?

4 A He -- he went and processed and opened the yellow
5 envelope. He took a blue envelope that was inside the yellow
6 envelope. He showed the blue envelope once again to everybody
7 in front of the camera. He went and processed to open the blue
8 envelope. He took the ballot, and shows to everybody that
9 result.

10 Q And you said you saw around five; he would do five of
11 these before you were cut off. Did he do it the exact same way
12 for all of -- all the five that you saw or around five?

13 A Yes, he did.

14 Q Okay. And so could you read the signatures that he would
15 show?

16 A Yes.

17 Q Could -- could you recognize some of the signatures that
18 he showed?

19 A Yes.

20 Q Yes. And then consequently, when he showed the ballots,
21 did you know how those people voted?

22 A Yes.

23 Q Okay.

24 MR. SOLEM: I have no other questions.

25 HEARING OFFICER SCHULZE: Okay. Mr. Casey, do you have

1 any questions for the witness?

2 MR. CASEY: No questions for the witness.

3 HEARING OFFICER SCHULZE: Okay. Mr. Phillips, any
4 questions for the witness?

5 MR. PHILLIPS: I do not.

6 HEARING OFFICER SCHULZE: Okay. And Mr. Scheid?

7 MR. SCHEID: No, not for this witness.

8 HEARING OFFICER SCHULZE: Okay, great. Well, it sounds
9 like we have heard everything -- okay. I -- I don't have any
10 questions for you, Mr. Morales. Thank you so much for being
11 here today. Please stay on the call in case we have to recall
12 you. But do turn off your video so that I can't see you on the
13 screen. Okay?

14 THE WITNESS: Say it again. Can you copy -- can you get
15 back to me, please? I didn't copy that.

16 HEARING OFFICER SCHULZE: Oh, yeah. So you're now off the
17 stand.

18 THE WITNESS: Uh-huh.

19 HEARING OFFICER SCHULZE: So we're finished with your
20 testimony. So if you can turn off your video, but please stay
21 on the Zoom call --

22 THE WITNESS: Got it.

23 HEARING OFFICER SCHULZE: -- in case we need to bring you
24 back on.

25 THE WITNESS: Thank you, Madam Officer.

1 HEARING OFFICER SCHULZE: Okay.

2 THE WITNESS: Thank you.

3 HEARING OFFICER SCHULZE: Thank you.

4 Mr. Solem, do you have any additional witnesses? I think
5 it's a no. Okay. And you're shaking your head no.

6 MR. SOLEM: That's a no.

7 HEARING OFFICER SCHULZE: Okay.

8 MR. SOLEM: No. I -- I should do better --

9 HEARING OFFICER SCHULZE: I just --

10 MR. SOLEM: -- at this after a year. But no.

11 HEARING OFFICER SCHULZE: I just want to double-check in
12 case anyone changes their mind in the middle of things. I
13 don't want to --

14 MR. SOLEM: Right.

15 HEARING OFFICER SCHULZE: -- suddenly move on and then
16 have someone jump out at me.

17 Okay. So I think now we're at Mr. Phillips. Would you
18 like to call your first witness?

19 MR. PHILLIPS: Yes. I'd like to call Steve Ross.

20 HEARING OFFICER SCHULZE: Perfect. And I can see his --
21 his screen now. Bear with me.

22 Mr. Ross, please raise your right hand, please.

23 MR. ROSS: Okay.

24 Whereupon,

25 **STEVE ROSS**



1 having been duly sworn, was called as a witness herein and was
2 examined and testified as follows:

3 HEARING OFFICER SCHULZE: Okay. Please state your first
4 and last name for the record and spell it.

5 THE WITNESS: Steve Ross, S-T-E-V-E R-O-S-S.

6 HEARING OFFICER SCHULZE: Great. Your witness, Mr.
7 Phillips.

8 MR. PHILLIPS: Thank you.

9 **DIRECT EXAMINATION**

10 Q BY MR. PHILLIPS: Steve, are you the current president of
11 the NABET-CWA Local 53?

12 A Yes.

13 Q How long have you served in that capacity?

14 A Almost 11 years.

15 Q And in your capacity as president of Local 53, have you
16 had any relationship in connection with the Fox Television
17 Stations, Inc. hub in Las Vegas?

18 A Yes.

19 Q Has the sector -- NABET-CWA sector assigned Local 53 to
20 administer the negotiations or to assist in their negotiations
21 for a collective bargaining agreement with the hub?

22 A Yes.

23 Q And have you participated in those negotiations on their
24 behalf?

25 A I have.

1 Q Okay. Now, in connection with the decertification
2 petition that is the subject matter of this hearing, were you
3 aware of that petition?

4 A Yes.

5 Q Did you attend a tally of the ballots conducted in
6 connection with that decertification petition on or about May
7 24, 2021?

8 A I did.

9 Q And were you the only representative for NABET-CWA at that
10 tally?

11 A Yes, I was.

12 Q All right. Do you have some recollection of what occurred
13 at the tally?

14 A Absolutely.

15 Q All right. Please tell the Hearing Officer, in your
16 words, exactly what you recall happening at that tally, from
17 the beginning to the end.

18 A Okay. So it started off where Mr. Johnson took -- and in
19 the process of counting the ballots, he first said that one
20 ballot did not have a signature on it and that would be a
21 spoiled ballot. He next held up that the envelope so we could
22 see that front and back, see there was no signature on it, and
23 so not putting this one aside.

24 Next, he started the process of holding up the first
25 ballot envelope -- the yellow envelope, I should say, and

1 literally held it up, just like this. It wasn't real close to
2 the camera. It was like -- about like this. And here's the
3 front. Okay. It's good, looks good. Here's the back --
4 immediately, just here's the back behind the back, held it up,
5 it's good, proceeded to ope -- open up the envelope.
6 The next thing he took out the inner envelope, the blue
7 envelope.

8 It was the same process at that point. He took and he
9 held up the blue envelope to show you that the envelope was
10 good. It was sealed. Here's the front, here's the back, and
11 then opened up the envelope, and then basically said, you know,
12 yes, no -- show -- show -- showed me the ballot for just a
13 short time, wasn't even a quick time. He just kind of held it
14 up and put it down.

15 Then he started the process on the second envelope.
16 Again, the whole process, I just said, was repeated.

17 Q All right. And during the course of -- of this tally of
18 these ballots in this fashion, as you've just described, did
19 anyone in attendance during that Zoom call voice any objection
20 to this process?

21 A No. There was -- the only -- the only thing, it was Mr.
22 Tom Casey had asked if he could get a list with the -- the --
23 the number next to it. And he said -- Mr. Johnson -- no, I'm
24 not going to do that.

25 Q Did he say why?

1 A I -- I -- my -- my re -- I recall him saying something
2 that would be either -- what's the word -- he made reference to
3 the fact that it would be unfair to take into -- to -- to give
4 that information.

5 Q Okay. And the tally -- was that at the end of the tally
6 or was that in the middle, or -- or when did that occur?

7 A I believe -- I think it was at the beginning of it, at the
8 start. Yeah.

9 Q All right. Now, at the end of the tally, did Mr. Johnson
10 ask everyone to sign the tally sheet?

11 A He did.

12 Q All right. And what do you recall happening in that
13 regard?

14 A Okay. So he took and sent the tally sheets to everybody,
15 emailed it to us. I got -- I got the tally sheet. I told him,
16 okay, I -- I got it. I signed it. I immediately, you know,
17 scanned it, and I sent it back to him. And he confirmed that
18 he got my -- he got it.

19 He then asked Tom Casey to sign it and do it. And Tom
20 Casey said, I don't have -- I can't do that, there's no --
21 no -- I can't do that today, I don't have the ability to be
22 able to give that to you today, I can't do that. And then Mr.
23 Johnson again said -- I guess he wanted to understand why he
24 couldn't do it. He was trying to figure out, well, is there --
25 how he could get it to him, because he said, I'd like to get

1 this done today, I'd like to get it wrapped up today, I'd like
2 to have all those signatures today. And again, he said, well,
3 I'm sorry, but I -- I just can't do this for you today, right
4 now there's no -- I don't have the ability to be able to send
5 this back to you -- get it back to you.

6 Q And was that the only reason that Mr. Thomas Casey gave
7 for not being able to sign the tally?

8 A Yes.

9 Q Okay. Was -- during the tally, was Mr. Scully, present
10 for Mr. Morales?

11 A Yes, he was.

12 Q And then Mr. Scully, as you've heard earlier, signed the
13 tally and sent it back; is that right?

14 A Correct.

15 Q Now, during the course of the tally, you were -- you were
16 not cut off. You were able to observe the entire tally; is
17 that right?

18 A Yes.

19 Q Did you -- were you able to read the signatures that Mr.
20 Johnson -- that appeared on the outer envelopes when Mr.
21 Johnson held them up?

22 A No, I wasn't able to read any of the signatures.
23 They're -- a lot of them were just scribbles. And I'm kind of
24 surprised in hearing the testimony, because I was looking at
25 them, and I -- and again, he didn't hold it right to the camera

1 so you can see the signature. He held it up like about -- like
2 this. So, you know, I mean, I got --

3 MR. PHILLIPS: And for -- for the record, the witness is
4 demonstrating, having held the envelope back a couple of feet
5 from the camera. If that's a fair description.

6 Q BY MR. PHILLIPS: Go ahead.

7 A All I remember is him kind of holding it, I would say -- I
8 don't know how far the camera was. I could see his whole
9 office. I could see his chair. You know, it wasn't like it
10 was a close up of -- of him holding the ballot. The whole
11 office was -- was there.

12 And so this -- this envelope was a tiny little part.
13 Okay? It wasn't like he's, you know, held it right up to the
14 camera, here you go, here's what it looks like. He held it up
15 like about like this. And it could've been -- yeah, I don't
16 know where the camera is situated, but it could be several
17 feet from the camera.

18 Q And how long -- for how long a period of time did he hold
19 it like that?

20 A He just held it up, as he said, here -- here's the front,
21 it looks good, here's the back, it looks good. He was just
22 showing you basically -- he wasn't giving you time so you could
23 sit there and look at the signature or read the signature. He
24 was just showing you that the ballot was in good shape. The
25 front looks good, the back looks good -- the back looks good,

1 okay, took out the -- the blue one, the front looks good, okay,
2 the back looks good. It was up there for maybe a second.
3 Honestly, I -- I -- I could not make out any -- any of those
4 signatures at all.

5 Q Did -- did anyone ask to look at the signatures more
6 closely?

7 A No.

8 Q So everyone just observed while this process was going on;
9 is that right?

10 A Correct.

11 MR. PHILLIPS: That's all I have.

12 HEARING OFFICER SCHULZE: Thank you.

13 Mr. Casey, do you have any questions for the witness?

14 MR. CASEY: No questions.

15 HEARING OFFICER SCHULZE: Okay. Mr. Solem, do you have
16 questions for the witness?

17 MR. SOLEM: No -- no, I don't. No.

18 HEARING OFFICER SCHULZE: Okay. And then Mr. Scheid.

19 MR. SCHEID: I just have one question.

20 **CROSS-EXAMINATION**

21 Q BY MR. SCHEID: You -- you testified about the Board agent
22 showing you the back of the envelopes with the signatures and
23 you couldn't make out any of the signatures. Did you see
24 anything -- any other details from the back of the envelope
25 when he flipped it around?

1 A No, I couldn't, no.

2 MR. SCHEID: That was my only question.

3 HEARING OFFICER SCHULZE: Okay. Mr. Phillips, do you have
4 any redirect?

5 MR. PHILLIPS: I do not.

6 HEARING OFFICER SCHULZE: Mr. Casey, it looks like you're
7 talking, but I can't tell if you're talking to me or someone
8 else.

9 MR. CASEY: No, nothing further.

10 HEARING OFFICER SCHULZE: Okay. Just checking, making
11 sure that it wasn't a muting issue. Okay.

12 Well, thank you, Mr. Ross. You may step down.

13 THE WITNESS: Should I leave my camera up or turn it off?

14 HEARING OFFICER SCHULZE: Turn it off, please. Thank you.

15 THE WITNESS: Okay.

16 HEARING OFFICER SCHULZE: Okay. So I think at this point,
17 every party has called their witnesses. Unless you had another
18 witness, Mr. Phillips. Sorry for assuming.

19 MR. PHILLIPS: I do not. Thank you.

20 HEARING OFFICER SCHULZE: Okay. Okay. Where we would go
21 from here is closing statements and then discussion of briefs
22 before we close the record. Does anyone need a moment to
23 prepare their closing statement?

24 Okay. I'm looking at -- I'm getting -- oh, wait. Hang
25 on.

1 Mr. Scheid, you're raising your hand. Yes?

2 MR. SCHEID: I don't have a closing statement, because I
3 don't have a position one way or another. But I do recall off
4 the record, earlier, counsel for the Union and asked about me
5 being able to provide documents that were sent to them as part
6 of the processing of this case. And I can do that. I just
7 don't know what the document was that they needed.

8 MR. PHILLIPS: Okay. Thank you. Yes. If -- if we could
9 supplement the record with the cover letter that was dated
10 April 15, 21 from the Regional Director of Region 28 to the
11 parties is the -- the cover letter attaching a copy of the
12 notice of the election and the stipulated election agreement.
13 It is a -- I believe, a 4-page cover letter, the last page just
14 showing a CC that Mr.-- to Mr. Scully.

15 HEARING OFFICER SCHULZE: Okay. And -- and Mr. Scheid, do
16 you have that handy?

17 MR. SCHEID: Let me share my screen. I believe I do.

18 HEARING OFFICER SCHULZE: Okay.

19 MR. SCHEID: Can you see the screen?

20 MR. PHILLIPS: Yes.

21 MR. SCHEID: Is this the letter that you had asked for?

22 MR. PHILLIPS: Ye -- I believe so. Could you just go back
23 to, I think, page 3. Yes, this is the -- this is the letter.
24 And if that could be admitted as Union Exhibit 1 is fine,
25 however you want -- would like to put it in is fine by me.

1 HEARING OFFICER SCHULZE: Okay, interesting. Any
2 preference to the parties -- well, first of all, is there any
3 objection to entering this letter into evidence? I'm seeing
4 head shakes.

5 MR. SOLEM: No objection from Petitioner.

6 MR. CASEY: No objection from the Employer.

7 HEARING OFFICER SCHULZE: Okay. And so I know that Mr.
8 Scheid is the one who has the document. Is there a preference
9 from Region 28 as to whether it goes in as a Regional Director
10 exhibit or Union exhibit?

11 MR. SCHEID: I think we'd prefer it'd be a Union exhibit.

12 HEARING OFFICER SCHULZE: Okay. I'm okay with that. So
13 what do we call this, the -- okay. So no objection to Union
14 Exhibit 1 being entered into evidence. Everybody else already
15 said no, so I'm going to go ahead and admit it.

16 **(Union Exhibit Number 1 Received into Evidence)**

17 HEARING OFFICER SCHULZE: And then we'll send a copy to
18 the court reporter. It's --

19 Mr. Scheid, do you mind sending that to -- thank you --
20 everybody?

21 And thank you for remembering that, too.

22 MR. PHILLIPS: Yes. Thank you.

23 HEARING OFFICER SCHULZE: So we're still seeing your
24 screen, just so you know. There we go.

25 Okay. So moving on again, I think -- did I forget

1 anything else that we talked about off the record? I think
2 we're caught up. I don't think I forgot anything. Or remind
3 me if I did.

4 We're going to move into closing statements and then talk
5 about briefs. Does anybody -- again, does anyone need a moment
6 to -- before they put on their closing? I'm seeing a head
7 shake, a head shake. I'd like to start in the same order we've
8 been going through, which is starting with the Employer, then
9 going to the Petitioner, and then going to the Union. So let's
10 go ahead and -- and get started.

11 Mr. Casey, you're up.

12 MR. CASEY: No closing statements, Madam Hearing Officer.
13 The Employer respects -- respectfully requests to submit a
14 post-hearing brief.

15 HEARING OFFICER SCHULZE: Okay. And Mr. Solem?

16 MR. SOLEM: We wouldn't give a closing statement either,
17 assuming everybody gets a post-hearing brief.

18 HEARING OFFICER SCHULZE: Okay. And Mr. Phillips?

19 MR. PHILLIPS: I'm fine with that.

20 HEARING OFFICER SCHULZE: Okay. So generally, I like to
21 do briefs due seven days after the close of the hearing. Let's
22 see where that puts us. That would put us at Friday, July 2nd.
23 I'm inclined to go with that unless somebody raises right now
24 any reason -- a compelling reason as to why it should be
25 different.

1 MR. PHILLIPS: If I could just -- hold on one second here.
2 I have a feeling that our office is closed that day, but I need
3 to check something.

4 Hold on -- hold on, please.

5 HEARING OFFICER SCHULZE: Okay.

6 MR. PHILLIPS: I have -- okay. The answer is that July
7 2nd would be okay. We're actually closing on Monday, the 5th.

8 HEARING OFFICER SCHULZE: I was thinking -- I was looking
9 at the holiday. And I was like, okay, it falls early in the
10 next week, so we're okay on that.

11 All right. So --

12 MR. CASEY: But I -- we have another matter that's due.
13 We would respectfully request that post-hearing briefs be due
14 on the 9th, which is the following Friday.

15 HEARING OFFICER SCHULZE: So I'm more inclined to go with
16 July 8th. I don't -- I understand that you may be like, why is
17 she taking a day off. I'm -- I don't want to do a full two
18 weeks only because I'd rather start working on this as soon as
19 possible. This is a very important issue to the parties. I
20 understand that the 5th of July is a holiday and that we are
21 closed at the Board, and there's a good chance that other
22 offices are also closed as well. So I would be -- I would be
23 fine with going to July 8th. And so that's what I will make
24 the brief due date as.

25 So briefs are due by close of business -- that's close of

1 business, not end of day -- on Thursday, July 8th, 2021. The
2 parties are reminded that they should request an expedited copy
3 of the transcript from the court reporter. Late receipt of the
4 transcript will not be grounds for an extension of time to file
5 briefs if you fail to do so. If there is nothing further, the
6 hearing will be closed.

7 MR. CASEY: Close of business is what time?

8 HEARING OFFICER SCHULZE: For us, that would be 4:30 p.m.
9 Pacific.

10 MR. CASEY: 4:30 Pacific.

11 MR. MORALES: Excuse me, Madam Officer?

12 HEARING OFFICER SCHULZE: Yes, I think that's Victor
13 speaking.

14 MR. MORALES: I'm sorry for the interruption. Do I need
15 to be present?

16 MR. SOLEM: No, no, no. You -- you can go now, Victor.

17 HEARING OFFICER SCHULZE: Yeah. No, we're actually --
18 we're about to close the record in a -- in a minute.

19 MR. MORALES: No, I meant do I need to be present at
20 July -- in July 8?

21 MR. SOLEM: No, no, no, Victor. Don't worry, Victor.
22 It's just the lawyers.

23 MR. MORALES: Okay. Thank you. I appreciate it. Have a
24 good day. Bye-bye. Thanks.

25 HEARING OFFICER SCHULZE: Okay. So I'm not hearing

1 anything else further. So with that being said, the hearing is
2 now closed.

3 Thank you.

4 **(Whereupon, the hearing in the above-entitled matter was closed**
5 **at 12:53 p.m.)**

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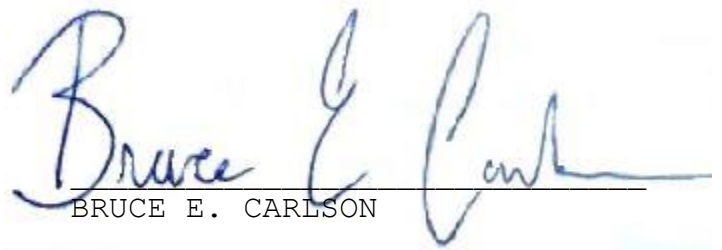
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C E R T I F I C A T I O N

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 36, Case Number 28-RD-274741, Fox Television Stations, LLC, Employer and Victor Morales, an Individual, Petitioner, and National Association Of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, AFL-CIO, held at the National Labor Relations Board, Region 36, Portland, Oregon 97204, on June 25, 2021, at 9:52 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



BRUCE E. CARLSON

Official Reporter

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

FOX TELEVISION STATIONS, LLC

Employer

and

Case 28-RD-274741

VICTOR MORALES

Petitioner

and

**NATIONAL ASSOCIATION OF BROADCAST
EMPLOYEES & TECHNICIANS, THE
BROADCASTING AND CABLE TELEVISION
WORKERS SECTOR OF THE
COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO-CLC**

Union

HEARING OFFICER'S REPORT ON OBJECTION

On April 30, 2021¹ an agent of Region 28 conducted the mail ballot count for an election among certain employees of the Employer. A majority of employees casting ballots in the election voted in favor of representation by the Union. However, the Employer contests the results of the election claiming that the Board agent conducting the mail ballot count compromised the integrity of the election, and therefore asks that the election be set aside and that a new election be held. Specifically, the Employer contends that the Board agent failed to maintain the secrecy of the election by showing each voters' signature on the back of the yellow postage-paid return mail ballot envelope, immediately opening the yellow envelope and the inner blue secret ballot envelope containing the ballot, and then revealing how each voter cast their ballot.

After conducting the hearing and carefully reviewing the evidence, as well as arguments made by the parties, I recommend that the Employer's objection be sustained because the evidence demonstrates that the Board agent engaged in conduct which raises reasonable doubt as to the fairness and validity of the election. More specifically, the evidence establishes that the Board agent failed to properly ensure the secrecy of the ballots cast, a fundamental principle of NLRB elections.

¹ Herein all dates are 2021 unless otherwise noted.

I. PROCEDURAL HISTORY

The Petitioner filed the petition on March 25 seeking to decertify the Union as the exclusive collective-bargaining representative of the bargaining unit. The parties agreed to the terms of an election and Region 28 approved their election agreement on April 14. The election was conducted by mail ballot with the ballots mailed from the Region 28 office on April 30 and with a return date of no later than May 14. The employees in the following unit voted on whether they wished to be represented by the Union:

INCLUDED: All full-time and regular part-time technicians and senior technicians employed by the Employer in Las Vegas, Nevada.

EXCLUDED: All other employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

According to Sec. 11336.2(c) of the Board's Casehandling Manual in Representation Proceedings, the Region mails each voter a kit containing: instructions, a ballot, a blue mail-ballot envelope, and a yellow postage-paid return envelope addressed to the Regional Office. The voter is instructed to mark the ballot, place it in the blue envelope, seal and place the blue envelope into the yellow envelope, seal and sign the back of the yellow envelope, and mail the yellow envelope back to the Regional Office.

Sometime between April 14 and May 24, Region 28 scheduled the ballot count to be conducted remotely via a Zoom videoconference call on May 24 at 1:00 p.m.

On May 24, an agent of Region 28 counted the ballots, with the parties present via a Zoom videoconference call, and provided a tally of ballots to the parties. The tally of ballots shows that 14 ballots were cast for the Union, 9 ballots were cast against representation, and 1 ballot was voided.² There were no challenged ballots. Thus, a majority of employees casting ballots in the election voted in favor of representation by the Union.

An objection was timely filed. The case was transferred from Region 28 to Region 19 on June 11. Thereafter, on June 14, the Regional Director for Region 19 ordered that a hearing be conducted to give the parties an opportunity to present evidence regarding the objection. As the hearing officer designated to conduct the hearing and to recommend to the Regional Director whether the Employer's objection is warranted, I heard testimony and received into evidence relevant documents on June 25. The Petitioner and Union timely filed briefs. The Employer untimely filed a brief.³ The timely filed briefs were carefully considered.

² No objections were filed over the voided ballot.

³ I note that the Employer submitted its brief after 4:30 p.m. but before 4:45 p.m. The Region 19 Office located in Seattle, Washington closes at 4:45 p.m., however, the Subregion 36 Office located in Portland, Oregon closes at 4:30 p.m. I confirmed on the record that briefs were due by close of business and specified 4:30 p.m.

II. THE BURDEN OF PROOF AND THE BOARD'S STANDARD FOR SETTING ASIDE ELECTIONS

It is well settled that “[r]epresentation elections are not lightly set aside. There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees.” *Lockheed Martin Skunk Works*, 331 NLRB 852, 854 (2000), quoting *NLRB v. Hood Furniture Co.*, 941 F.2d 325, 328 (5th Cir. 1991) (internal citation omitted). Therefore, “the burden of proof on parties seeking to have a Board-supervised election set aside is a heavy one.” *Delta Brands, Inc.*, 344 NLRB 252, 253, (2005), citing *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989).

To set aside an election based on Board agent misconduct or Regional office procedural irregularities, the objecting party must show that there is evidence that “raises a reasonable doubt as to the fairness and validity of the election.” *Durham School Services, LP*, 360 NLRB 851, 853 (2014), citing *Polymers, Inc.*, 174 NLRB 282, 282 (1969), *enfd.* 414 F.2d 999 (2d Cir. 1969), *cert. denied* 396 U.S. 1010 (1970); see also *Physicians & Surgeons Ambulance Service*, 356 NLRB 199 (2012), *enfd.* 477 Fed. Appx 743 (D.C. Cir. 2012). When the alleged misconduct is the Board agent’s failure to ensure the secrecy of voter balloting, the Board will not set aside the election under the *Polymers* standard absent evidence that someone witnessed how a voter marked his or her ballot. *Avante at Boca Raton*, 323 NLRB 555, 558 (1997).

III. THE EMPLOYER’S OPERATIONS

The Employer operates commercial television stations throughout the United States, including a control hub facility in Las Vegas, Nevada. The Las Vegas facility serves as a remote master control operation for a number of the Employer’s 18 television stations. The Employer employs twenty five bargaining unit employees at the Las Vegas facility.

IV. THE OBJECTION: THE BOARD AGENT DID NOT MAINTAIN THE SECRECY OF THE BALLOTS

The order directing hearing in this matter instructs me to resolve the credibility of witnesses testifying at the hearing and to make findings of fact. Unless otherwise specified, my summary of the record evidence is a composite of the testimony of all witnesses, including in particular testimony by witnesses that is consistent with one another, with documentary evidence, or with undisputed evidence, as well as testimony that is uncontested. Omitted testimony or evidence is either irrelevant or cumulative. Credibility resolutions are based on my observations of the testimony and demeanor of witnesses and are more fully discussed within the context of the objection related to the witnesses’ testimony.

A. EVIDENCE

On May 24, the Zoom call began as scheduled, with the Board agent, the Employer’s representative, the Union’s representative, the Petitioner’s representative, and the Petitioner all participating in the mail ballot count remotely. The Board agent voided one ballot because it was unsigned. The Board agent then proceeded to count the ballots by pulling out the first envelope and, using the camera on his computer, showing the parties the yellow postage-paid return

envelope Region 28 had received, specifically the voter signature on the back and the eligibility key number printed on the back on the envelope. After holding up the yellow postage-paid return envelope, he proceeded to open the yellow envelope and remove the inner blue mail-ballot envelope from inside. The Board agent then held up the blue envelope to the camera and showed the parties the front and back of the blue envelope. Then, the Board agent immediately opened the blue envelope, removed the ballot from inside, stated the marking on the ballot and showed the ballot to the parties. The Board agent repeated this process for each ballot. It is not clear from the record whether the Board agent stated the name of the voter at the time he showed the parties the voter's yellow envelope.

Upon the conclusion of the opening the envelopes and showing the marking on each ballot, the Board agent tallied the ballots. As noted above, the tally shows that of the approximately 25 eligible voters, 14 votes were cast for the Union, 9 cast against representation, and 1 void ballot.

According to Sec. 11226.5(b) of the Board's Casehandling Manual in Representation Proceedings, at the scheduled time for the ballot count, the returned envelopes are treated as "voters." Typically when a mail ballot count is conducted in person, the observers check off the voters by marking alongside the respective names on the list but, since this ballot count was conducted virtually, the Board agent checked off the respective names. After the yellow outer return envelopes are checked against the list, all are supposed to be opened at once. Next, the blue ballot envelopes are supposed to be mixed thoroughly before those envelopes are opened and the ballots removed. The ballots are supposed to be comingled once more before the ballot markings are revealed and counted.

All four witnesses testified that they attended the ballot count. Both the Employer's witness and the Petitioner's witnesses testified that they were able to read most of the voters' signatures on the back of the yellow envelopes.

Employer witness Thomas Casey testified that the Board agent refused to provide a copy of the voter list to the parties, and then immediately began the count. Casey testified that when the Board agent held up the first yellow envelope and showed the back side of the yellow envelope, he could read the voter's signature (Steve Wooten) and the eligibility key number (25) and knew that the envelope belonged to the last voter on the voter list the Employer had submitted to the Board. Casey testified that, because of the Board agent's actions, he knew how Wooten had voted. Casey further testified that he could read the next voter's signature (John Vasquez) and the eligibility key number (24), and that he then knew how Vasquez voted. Casey testified the same for the next voter (Bruce Twitchell, eligibility key number 23). Further testimony on each individual voter was omitted from the record as cumulative. Casey testified that after a few ballots, he realized the Board agent was holding up the envelopes and opening the ballots in reverse alphabetical order and he could identify each voter.⁴

⁴ Notably, Casey testified to being able to read the signatures on the yellow envelopes, not that he was comparing the signatures to any other documents or had knowledge of what each voter's signature looked like prior to the count.

Petitioner Morales was present for the opening of the first five ballots before he lost connection to the Zoom call. Morales testified that he recognized some of the signatures on the yellow envelopes he saw, and thus knew how those voters had cast their ballots when the Board agent immediately revealed the ballots.

Petitioner Representative John Scully testified first that he could read the signatures and that most of them were “as legible as... a signature in a phone book,” though he conceded immediately after that some of the signatures were less than legible.

Union President Steve Ross testified that the Board agent held the yellow envelopes too far away from the camera to be able to read the signatures, and only held each envelope up for a few seconds.

B. BOARD LAW

The National Labor Relations Act authorizes, and the Rules and Regulations of the Board provide, for a secret ballot election. 29 C.F.R. § 102.69. When evaluating objectionable conduct, the Board will set aside an election when the alleged conduct “so interfered with the necessary ‘laboratory conditions’ as to prevent the employees’ expression of a free choice in the election.” *Dairyland USA Corp.*, 347 NLRB 310, 313 (2006), *enfd. sub nom. NLRB v. Food & Commercial Workers Local 348-S*, 273 Fed. Appx. 40 (2d Cir. 2008).

The Board has a longstanding policy of voiding ballots which reveal the identity of the voter, such as when the voter signs his or her ballot. E.g. *J. Brenner & Sons, Inc.*, 154 NLRB 656, 659 fn.4 (1965). In *Columbine Cable Co., Inc.*, 351 NLRB 1087 (2007), the Board invalidated an election where two late arriving voters were permitted to mark their ballots outside the privacy of a voting booth under circumstances where they could have reasonably believed that they were being observed as they voted. In *Sorenson Lighted Controls, Inc.*, 286 NLRB 969 (1987), the Board ruled that a ballot should have been voided when a voter showed their marked ballot to a fellow voter before dropping it in the ballot box. The Board also held, however, that the election results in such a situation should only be overturned when the number of ballots improperly revealed was sufficient to affect the result of the election – in *Sorenson*, the one ballot that should have been voided did not affect the outcome of the election. See also, Sec. 11340.4 of the Board’s Casehandling Manual in Representation Proceedings ([i]n any election, a ballot that contains a means of identifying the voter is supposed to be considered void.”).

In *General Photo Products Division of Anken Industries*, 242 NLRB 1371 (1979), the Board stressed:

...This policy of secrecy is regarded as a matter of public concern rather than a personal privilege subject to waiver by the individual voter, and, thus, the secrecy of the ballot is viewed as outweighing the voter's intent. Therefore, the voter's motivation is not considered and, hence, even in situations where the mark may have been placed innocently, the ballot is voided and the voter is effectively disenfranchised. (internal citations omitted)

C. THE PARTIES' ARGUMENTS

The Employer's brief was untimely and therefore not considered. On the record, the Employer argued that the election should be overturned because the Board agent's conduct destroyed the secrecy of the election.

The Petitioner urges the objection be sustained because the secrecy of the election was compromised. In support of this, the Petitioner argues that the only factual dispute at the hearing is whether the participants of the Zoom call could read the voters' signatures on the yellow envelopes. In that regard, the Petitioner asserts that if the Board agent had failed to display the signatures, that would be objectionable conduct.⁵ The Petitioner further argues that one can clearly read the first name of the signature on the sample envelope in Regional Director's Exhibit 2.

The Union makes two main points in its argument that the objection be overruled. First, that there was no evidence introduced at the hearing that anyone observing the ballot count could read the signatures on the yellow envelopes. Second, even if the objection were found to have merit, it did not impact the results of the election.

Regarding the first point, the Union relies on Ross's testimony as evidence that none of the participants of the count could read the signatures. Moreover, nobody objected to the Board agent's procedure at the election and that all of the parties were initially fine with signing off on the tally of ballots. The Petitioner and Union both signed off on the tally of ballots and Casey had stated his willingness to sign off on the tally of ballots but did not have the tools necessary to do so remotely. The tally of ballots includes the provision that the parties certified that the "...counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above...." Thus, the Union argues that the Employer verbally agreed that the secrecy was maintained.

Regarding the second point, the Union asserts that the Board has the discretion to determine whether the irregularity of the election casted doubt on the results, and whether to uphold the results of an election after an irregularity occurred. On the record, the Union cited to the unpublished Board decision in *Stericycle, Inc.*, Case 04-RC-260851 (2021). In *Stericycle*, the Zoom call unexpectedly quit during a ballot count and the Board agent picked up the count where they had left off when the participants rejoined the Zoom call. The Board declined to rerun the *Stericycle* election, citing that the brief interruption and angle of the camera did not raise a reasonable doubt to the fairness and validity of the election, and also that setting the election aside would result in waste of resources and delay, and would be a disservice to the employees who cast their ballots in good faith.

D. RECOMMENDATION

I recommend that the Employer's objection be sustained. This ballot count did not adhere to the secrecy required by the Board in the Rules and Regulations, as such, the election must be set aside and a new election must be conducted. This is an unusual set of undisputed facts which establish that the Board agent showed the parties the signature on the yellow envelope, opened the

⁵ There is no objection alleging that the Board agent failed to fully display the signatures.

envelopes containing the voter's ballot, read aloud the marking on the ballot, and showed the parties the ballot, all before moving onto the next ballot. Though there is some dispute as to the legibility of the signatures on the yellow envelopes, three of the witnesses testified to being able to read at least some of the signatures. It is not disputed that the Board agent failed to comingle the inner blue envelopes or comingle the ballots prior to counting and tallying the ballots.

The testimony of each witness, so far as what they each observed during the ballot count, is not mutually exclusive. I note that each of the observers viewed the count remotely and, as such, had to be using different electronic devices. There is no evidence on the record, nor in the demeanor of the witnesses during the hearing, to discredit their testimony of their own experience and observations during the ballot count. Thus, I credit each witness as to their own experience and observations during the ballot count.

While the Board agent's conduct did not change any of the votes cast, as the Union argues, the secrecy of elections is paramount to the Board and is specifically written into the Board's Rules. Notably, if the Board was not concerned about the secrecy of a mail ballot election, it would not void any mail ballots with identifying markings on the ballot, since such a ballot could not impact the outcome of a mail ballot election.

V. CONCLUSION

Consistent with my findings above that the Employer's objection be sustained insofar as there is sufficient evidence to establish that the Board agent did not safeguard the secrecy of the votes cast which raises a reasonable doubt as to the fairness and validity of the election, I recommend that the election held on April 30, 2021 be set aside and that a new election be conducted.

APPEAL PROCEDURE

Pursuant to Section 102.69(c)(1)(iii) of the Board's Rules and Regulations, any party may file exceptions to this Report, with a supporting brief if desired, with the Regional Director of Region 19 by August 10, 2021. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Pursuant to Section 102.5 of the Board's Rules and Regulations, exceptions must be filed by electronically submitting (E-Filing) through the Agency's website (www.nlr.gov), unless the party filing exceptions does not have access to the means for filing electronically or filing electronically would impose an undue burden. Exceptions filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission.

Pursuant to Sections 102.111 – 102.114 of the Board's Rules, exceptions and any supporting brief must be received by the Regional Director by close of business 4:45 p.m. on the due date. If filed electronically, it will be considered timely if the transmission of the entire

document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date.

Within 5 business days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions may file an answering brief with the Regional Director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Dated: July 27, 2021



Jennifer Schulze
Hearing Officer

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

FOX TELEVISION STATIONS, LLC

Employer

and

Case 28-RD-274741

VICTOR MORALES, an Individual

Petitioner

and

**NATIONAL ASSOCIATION OF BROADCAST
EMPLOYEES & TECHNICIANS, THE
BROADCASTING AND CABLE TELEVISION
WORKERS SECTOR OF THE
COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO**

Union

**ORDER DIRECTING HEARING AND
NOTICE OF HEARING ON OBJECTION**

Based on a petition filed on March 25, 2021 and pursuant to a Stipulated Election Agreement, a mail-ballot election was conducted on April 30, 2021 to determine whether a unit of employees of Fox Television Stations, LLC (the Employer) wish to be represented for the purposes of collective bargaining by National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communications Workers of America, AFL-CIO. That voting unit consists of:

INCLUDED: All full-time and regular part-time technicians and senior technicians employed by the Employer in Las Vegas, Nevada.

EXCLUDED: All other employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

The tally of ballots prepared on May 24, 2021, at the conclusion of the election, shows that of the approximately 25 eligible voters, 14 votes were cast for and 9 votes were cast against the Union, with one void ballot and no challenged ballots.

On June 1, 2021, the Employer filed a timely objection to the conduct of the election. A copy of the objection is attached to this Order.

By Order of the Acting General Counsel dated June 11, 2021, the case was transferred from Region 28 to Region 19.

CONCLUSION AND ORDER

I have concluded that the evidence submitted by the Employer in support of its objection could be grounds for overturning the election if introduced at a hearing. Accordingly, in accordance with Section 102.69(c)(1)(ii) of the Board's Rules and Regulations, IT IS ORDERED that a hearing shall be held before a Hearing Officer designated by me, for the purpose of receiving evidence to resolve the issues raised by the objection. At the hearing, the parties will have the right to appear in person to give testimony, and to examine and cross-examine witnesses.

Upon the conclusion of the hearing, the Hearing Officer shall submit to me and serve on the parties a report containing resolutions of the credibility of witnesses, findings of fact and recommendations as to the disposition of the objection.

NOTICE OF HEARING

Starting at 9:00 a.m. Pacific Time on Friday, June 25, 2021, via Zoom videoconference, the hearing on objection as described above will be conducted before a hearing officer of the National Labor Relations Board. The hearing will continue on consecutive days thereafter until completed unless I determine that extraordinary circumstances warrant otherwise.

Dated: June 14, 2021

A handwritten signature in black ink, reading "Ronald K. Hooks", written over a horizontal line.

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 2nd Ave., Ste. 2948
Seattle, WA 98174

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

FOX TELEVISION STATIONS, LLC

Employer,

and

NABET-CWA, LOCAL 53

Union.

Case No. 28-RD-274741

OBJECTIONS TO ELECTION

Fox Television Stations, LLC (the “Company”) hereby files objections to conduct which affected the results of the election in the above-captioned matter as follows:

1. On May 24, 2021, during the videoconference for the counting of ballots, NLRB Board Agent Michael Johnson (“Board Agent”) showed the name of each individual voter’s signature and revealed how each voter voted during the count. Specifically, beginning with the large yellow exterior envelope for the first voter, the Board agent held up both the front and back sides of the yellow envelope up to his camera on the Zoom videoconference for the parties to examine. This allowed all the parties present the ability to see and read the signature of the voter. The Board Agent then opened the exterior yellow envelope and removed the sealed interior blue envelope and displayed it to the parties. The Board Agent then opened the interior blue envelope, removed the ballot contained within, and displayed the ballot to the parties revealing whether that specific employee voted “yes” or “no.” The Board Agent repeated this process for all of the 23 ballots counted. As a result, all participants on the Zoom video conference, including the Union’s President and the Employer’s agent, knew how each one of

the 23 employees voted and whether or not he or she supported the Union or not. The Board Agent's conduct revealed the vote of every voter and raised a reasonable doubt as to the fairness and the validity of the election.

The conduct set forth in the above Objections to the Election compromised the validity of the election by revealing the vote of every voter in the election. For these reasons, and the additional reasons that the Region and the Company might discover, the Company requests that the results of the election in the above-captioned matter be set aside, and a new election ordered.

ARGUMENT

The ability for an individual to vote by secret ballot is an essential characteristic of any legitimate voting process because it protects voters from fear of intimidation or coercion. That is why complete secrecy of the ballots in an NLRB-administered election is expressly required by the National Labor Relations Act and, therefore, must be observed in all Board-conducted elections. See 29 U.S.C. § 159 (e)(1) ("Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 158(a)(3) of this title, of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.")

Pursuant to its duty under the Act, Region 28 expressly guaranteed in its April 15, 2021 Notice of Election that it would conduct a "secret ballot" election.

Under well-settled Board law, where there is evidence that someone witnessed how a voter voted, the election must be set aside. "In order to set aside an election based on Board agent misconduct, there must be evidence that 'raises a reasonable doubt as to the fairness and validity of the election.'" *Physicians & Surgeons Ambulance Service, Inc.* 356 NLRB. 199, citing *Polymers, Inc.*, 174 NLRB 282, 282 (1969), *enfd.* 414 F.2d 999 (2d Cir. 1969), *cert.*

denied 396 U.S. 1010 (1970). Where the alleged misconduct is the Board agent's failure to ensure the secrecy of voter balloting, the Board will set aside the election where there is evidence that someone witnessed how a voter marked his or her ballot. *Avante At Boca Raton*, 323 NLRB 555, 558 (1997) (holding that an election would not be set aside because there was no evidence that someone witnessed how a voter marked his or her ballot).

The instant election must be overturned because the secrecy of all 23 ballots counted was not maintained. The Board Agent revealed the names of each of the voters and how every voter marked his or her ballot. The Board Agent revealed this information to the Union's representative, the Employer's representative and both of the Petitioner's representatives who were present on the May 24, 2021 video conference.

The NLRB and all parties, including every employee voter, have been disadvantaged by the failure to maintain the secrecy of the ballots. The hallmark of every Board-conducted election is the paramount importance placed on safeguarding the secrecy of every person's secret ballot vote, including all individuals who voted for union representation and all persons who voted against union representation. The failure to preserve the secrecy of each participant's vote cast in any election casts doubt on the fundamental integrity of the Board's election process, which warrants setting aside the election for this reason alone.

The failure to maintain the secrecy of every participant's secret ballot vote also substantially disadvantages and causes prejudice to each party and participant in the election. It creates a risk that employees who voted against the Union may be exposed to retaliation from fellow voters who supported the Union and/or from the Union itself. It creates a risk that employees who voted in favor of the union may be exposed to retaliation from fellow voters who voted against the Union and/or from the Employer. It creates a risk that the Union may be exposed to allegations of retaliation by voters who failed to support the Union, which otherwise

could not be alleged if the secrecy of the election had been observed. Likewise, it creates a risk that the Employer may be exposed to allegations of retaliation by voters who supported the Union, which otherwise could not be alleged if the secrecy of the election had been observed.

Respectfully submitted,

/S/ Kevin Casey

Kevin Casey
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CERTIFICATE OF SERVICE

I, Thomas Casey, for the Employer hereby certify that a copy of the foregoing Objections to Election was served, pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations, via electronic mail, upon the following:

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

FOX TELEVISION STATIONS, LLC

Employer

and

Case 28-RD-274741

VICTOR MORALES, an Individual

Petitioner

and

**NATIONAL ASSOCIATION OF BROADCAST
EMPLOYEES & TECHNICIANS, THE
BROADCASTING AND CABLE TELEVISION
WORKERS SECTOR OF THE COMMUNICATIONS
WORKERS OF AMERICA, AFL-CIO**

Union

**ORDER DIRECTING CHALLENGED BALLOTS
BE OPENED AND COUNTED**

Based on a petition filed on March 25, 2021 by Victor Morales (Petitioner), and pursuant to a Stipulated Election Agreement, a mail ballot election was conducted between April 30, 2021 and May 14, 2021 among the Unit of employees employed by Fox Television Stations, LLC (the Employer).¹

The Tally of Ballots, which was served on the parties at the conclusion of the election, showed the following:

Approximate number of eligible voters	25
Number of void ballots	1
Number of votes cast for Union	14
Number of votes cast against participating labor organization(s)...	9
Number of valid votes counted	23
Number of challenged ballots	0
Number of valid votes counted plus challenged ballots	23

¹ The following unit was found appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time technicians and senior technicians employed by the Employer in Las Vegas, Nevada.

EXCLUDED: All other employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

The Employer subsequently filed an objection to conduct affecting the results of the election. Following a hearing on the objection, the Hearing Officer issued a report recommending that the objection be sustained, and that a second election be directed. On August 12, 2021, the Regional Director for Region 19 issued a Decision and Direction of Second Election, ordering that the mail ballot election conducted between April 30, 2021 and May 14, 2021 be set aside and that a new election be conducted.

On September 9, 2021, an Order Scheduling Second Election issued, and a second mail-ballot election was conducted between September 28, 2021 and October 12, 2021. The Tally of Ballots, which was served on the parties at the conclusion of the second election, showed the following:

Approximate number of eligible voters	25
Number of void ballots	0
Number of votes cast for Union	11
Number of votes cast against participating labor organization(s)...	8
Number of valid votes counted	19
Number of challenged ballots	4
Number of valid votes counted plus challenged ballots	23

The challenged ballots were sufficient in number to affect the results of the election.

The challenged ballots were those of Scott T. Frazier (Frazier), Brent B. Haynes (Haynes), Austin P. Sarinana (Sarinana), and Bruce A. Twitchell (Twitchell). The ballots of Frazier and Twitchell were challenged by the Employer for being received after the October 12, 2021 deadline for voters to return their mail ballots. The ballots of Sarinana and Haynes were challenged by the Petitioner for having signatures that appeared across the top rather than the flap of the yellow ballot envelope.

On November 9, 2021, I approved a Stipulation Resolving Challenged Ballots (Stipulation), which was signed by all of the parties. Pursuant to the Stipulation, the parties stipulated that Frazier, Twitchell, Sarinana, and Haynes are eligible voters appropriately included in the Unit and that their challenged ballots should be opened and counted. Furthermore, the Employer and Petitioner agreed to withdraw their challenges regarding the ballots of Frazier, Twitchell, Sarinana, and Haynes.

Furthermore, under the Stipulation, the parties waived their rights to: (a) submission of any further evidence pertaining to the challenged ballots; (b) a hearing on the challenged ballots; (c) a report on the challenged ballots; (d) exceptions to any such report; (e) a decision by the Regional Director on the challenged ballots; (f) a request for review of any such decision; (g) review by the National Labor Relations Board (the Board) of any such decision; (h) a decision and order of the Board on the challenged ballots; (i) any other right or privilege they may have with respect to the challenged ballots under the National Labor Relations Act (the Act) or the Board's Rules and Regulations; and (j) any other proceedings related to the challenged ballots to which they may be entitled under the Act or the Board's Rules and Regulations. Thus, I conclude that it is appropriate to open and count the ballots of Frazier, Twitchell, Sarinana, and Haynes.

IT IS ORDERED that the ballots of Frazier, Twitchell, Sarinana, and Haynes will be opened and counted on Tuesday, November 16, 2021 at 10:00 a.m. [Mountain Standard Time].

The parties will be permitted to participate in the ballot count, which will be held by videoconference. A meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count. Upon the conclusion of the ballot count, a revised tally of ballots will be made available to the parties.

Dated at Phoenix, Arizona, this 10th day of November, 2021.

/s/ **Cornele A. Overstreet**

Cornele A. Overstreet, Regional Director

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

In the matter of

FOX TELEVISION STATIONS, LLC

EMPLOYER

AND

CASE 28-RD-274741

VICTOR MORALES, An Individual

PETITIONER

AND

**NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES & TECHNICIANS, THE
BROADCASTING AND CABLE TELEVISION WORKERS SECTOR OF THE
COMMUNICATIONS WORKERS OF AMERICA, LOCAL 53, AFL-CIO**

UNION

**ORDER TRANSFERRING CASE
FROM REGION 28 TO REGION 19**

Case 28-RD-274741, having been filed with the Regional Director for Region 28, and the Acting General Counsel of the Board having duly considered the matter, and deeming it necessary in order to effectuate the purpose of the National Labor Relations Act, and to avoid unnecessary costs and delay,

IT IS HEREBY ORDERED, in accordance with the Rules and Regulations of the National Labor Relations Board, that Case 28-RD-274741 be, and hereby is, transferred to and continued in Region 19.

/s/ Beth Tursell

FOR:

Peter Sung Ohr
Acting General Counsel

Dated: June 11, 2021
at Washington, D.C.

cc: Region 28, Region 19

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

In the Matter of

FOX TELEVISION STATIONS, LLC

Employer

and

CASE 28-RD-274741

VICTOR MORALES, An Individual

Petitioner

and

**NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES & TECHNICIANS, THE
BROADCASTING AND CABLE TELEVISION WORKERS SECTOR OF THE
COMMUNICATIONS WORKERS OF AMERICA, LOCAL 53, AFL-CIO**

Union

**ORDER TRANSFERRING CASE
FROM REGION 19 TO REGION 28**

Case 28-RD-274741, having been filed with the Regional Director for Region 28, and transferred to Region 19, and the General Counsel of the Board having duly considered the matter, and deeming it necessary in order to effectuate the purposes of the National Labor Relations Act, and to avoid unnecessary costs and delay

IT IS HEREBY ORDERED, in accordance with the Rules and Regulations of the National Labor Relations Board, that Case 28-RD-274741 be, and hereby is, transferred back to and continued in Region 28.

_____/s/ John D. Doyle, Jr._____
FOR:

Jennifer A. Abruzzo
General Counsel

Dated: August 13, 2021

at Washington, DC

cc: Region 28, Region 19

**BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

**PATIENT CARE OF PENNSYLVANIA,
INC., D/B/A PATIENT CARE,**

Employer,

And

**LABORERS INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 131,**

PETITIONER.

Case No. 4-RC-101021

The above-entitled matter came on for hearing pursuant to Notice, before **HON. JOEL BIBLOWITZ**, Administrative Law Judge, at Cahn U.S. Courthouse and Federal Building, 504 Hamilton Street, Courtroom C, Allentown, Pennsylvania, on Thursday, June 20, 2013, at 10:00 a.m.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

A P P E A R A N C E S

1 **On Behalf of the General Counsel:**

2

3

EMILY DESA, ESQ.

4

National labor Relations Board, REGION 4

5

615 CHESTNUT STREET, SUITE 710

6

PHILADELPHIA, PA 19106

7

8 **On Behalf of the Employer:**

9

10

THOMAS J. BIRCHFIELD, ESQ.

11

CLAIRE M. VUJANOVIC, ESQ.

12

FISHER & PHILLIPS, LLP

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LOUISVILLE, KY 40202-1395

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(502) 561-3960

16

(502) 561-3985

17

18 **On Behalf of the Union/Petitioner:**

19

20

IRA H. WEINSTOCK, ESQ.

21

LAW OFFICES OF IRA H. WEINSTOCK, P.C.

22

800 NORTH SECOND STREET, SUITE 100

23

HARRISBURG, PA 17102-3233

24

(717) 238-1657

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1		<u>I N D E X</u>				
2						
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
3						
4	DINA PAOLICELLI	11	24	35	34	--
5						
6	ROBERTA KASMIROSKI	38	44	63	--	--
7						
8	NIOBE DELP	65	70	82	82	--
9		--	79	--	--	--
10						
11	CHARLES CLARKE	85	91	--	--	--
12		--	96	--	--	--
13		--	96	--	--	--
14						
15	JULIO PALOMO	99	105	--	--	--
16		--	111	--	--	--
17		--	112	--	--	--
18						
19	THOMAS BORUM	115	120	--	--	--
20						
21	DAVID RODRIGUEZ	121	133	--	--	--
22		--	139	--	--	--
23						
24						
25						

1		<u>E X H I B I T S</u>	
2	<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
3			
4	<u>Board</u>		
5	B-1	6	6
6	<u>Employer</u>		
7	E-1	15	15
8	<u>Petitioner</u>		
9	P-1	53`	--
10			

BURKE COURT REPORTING, LLC
 1044 Route 23 North, Suite 316
 Wayne, New Jersey 07470
 (973) 692-0660

1

P R O C E E D I N G S

2

(Time Noted: 10:00 a.m.)

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JUDGE BIBLOWITZ: On the record. This is a hearing in the matter of Patient Care of Pennsylvania, Inc., d/b/a Patient Care, Employer and Laborers International Union of North America, Local 1310, Petitioner, case number 4-RC-101021. The Administrative Law Judge conducting the hearing is Joel B. Biblowitz, B-I-B-L-O-W-I-T-Z, pursuant to a notice of hearing on objections to election dated May 22, 2013.

Appearances please for is there a Board representative?

MS. DESA: Yes, Emily Desa, representative of the Regional Director, National Labor Relations Board, Region 4, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania 19106.

JUDGE BIBLOWITZ: And for the Petitioner, please.

MR. WEINSTOCK: The law firm of Ira H. Weinstock, P.C., by Ira H. Weinstock, 800 North Second Street, Harrisburg, Pennsylvania 17102.

JUDGE BIBLOWITZ: And for the Employer, please.

MR. BIRCHFIELD: Yes, Thomas Birchfield and Claire Vujanovic. I'll spell her last name for you, V-U-J-A-N-O-V-I-C, Fisher and Phillips, 220 West Main Street, Suite 2000, Louisville, Kentucky for the Employer.

JUDGE BIBLOWITZ: Okay, thank you. Ms. Desa, you have the formal papers. Has everybody seen them?

MS. DESA: Your Honor, I will retrieve them from the

1 parties. They're finishing up looking at them.

2 JUDGE BIBLOWITZ: Everybody, any objection to the formal
3 papers?

4 MR. BIRCHFIELD: No objection from the Employer.

5 JUDGE BIBLOWITZ: And Mr. Weinstock.

6 MR. WEINSTOCK: No objection from the Petitioner.

7 JUDGE BIBLOWITZ: Thank you. So, Board Exhibit One is
8 received.

9 **(Board Exhibit One identified and received)**

10 JUDGE BIBLOWITZ: Mr. Birchfield, do you wish to make a
11 brief opening statement or should we just go onto the witnesses?

12 MR. BIRCHFIELD: Yes, we'll do a brief opening statement.
13 The Board has long held that an election be satisfied in the
14 objecting party shows that the number of voters possibly
15 disfranchised by an election is sufficient to effect the
16 outcome. We will show that the Board agent here closed the
17 polls early and allowed Union representatives into the polling
18 place early.

19 These Union representatives were crowded around the
20 entrance of the polling place prohibiting ingress and egress.
21 The evidence will show that Roberta Kasmiroski, an eligible
22 voter, arrived at 9:29 a.m., one minute prior to the end of the
23 voting.

24 The evidence will show that when made aware of Ms.
25 Kasmiroski's presence the Board agent refused to allow her to

1 vote and failed to follow the Board's own case handling manual,
2 which says he should have allowed her to vote under challenge
3 which is at Section 11324.1.

4 Finally, the evidence will show that Ms. Kasmiroski's vote
5 would have determined the outcome of the election. It was a 4
6 to 3 election and she would have been the 8th voter. And we
7 think that this situation is most unfortunate since there was a
8 Norris-Thermador Agreement.

9 Everybody knew who the eligible voters were. There were
10 no disputes about who should have been voting. And the fact
11 that she was not allowed to vote is an improper
12 disenfranchisement. And we think a re-run election should be
13 ordered in due haste.

14 JUDGE BIBLOWITZ: Mr. Weinstock, do you wish to make a
15 brief opening statement?

16 MR. WEINSTOCK: I will. As you heard each of the four
17 objections directly relate to matters of the conduct of the
18 Board agent. We don't believe the Board agent did anything
19 incorrectly. He followed the Board's rules and the manual. And
20 the fifth objection you will find out from the evidence that
21 there's no merit to their objection. We'd ask that they be
22 dismissed and that the results be certified.

23 JUDGE BIBLOWITZ: Okay, thank you. Ms. Desa, do you wish
24 to make an opening statement?

25 MS. DESA: Yes, Your Honor. I'm here as representative of

1 the regional director to see that the evidence adduced during
2 the investigation is made available to the administrative law
3 judge. In pursuant to the dysfunction I may ask some questions
4 and if necessary call witnesses. I want to say that I am not
5 here to support any preconceived positions. My services are
6 equally at the disposal of the administrative law judge and all
7 parties.

8 Your Honor, will we have an opportunity to make a closing
9 statement?

10 JUDGE BIBLOWITZ: If you wish you can make a closing
11 statement or file briefs or both. I'll give you only, give all
12 the parties only approximately 10 days to file briefs. In these
13 cases, representation cases we always try to get a decision out
14 quickly, will get a decision out quickly. And so, I will give
15 approximately 10 days for briefs or 10 days for briefs, and so
16 if you wish to make a brief closing statement that will be fine
17 in lieu of or in addition to.

18 MS. DESA: Okay, yes, Your Honor, just depending upon how
19 the testimony is presented I may want to point out a couple of
20 cases.

21 JUDGE BIBLOWITZ: Okay.

22 MS. DESA: That the regional director believes to be
23 relevant.

24 JUDGE BIBLOWITZ: Okay, either that or you can file a
25 brief, make a letter brief or a formal brief, whatever you wish.

1 Mr. Birchfield, do you have a witness for us?

2 MR. BIRCHFIELD: Yes, we do. And I just want to make sure
3 that we're going to sequester witnesses. I guess everybody is
4 sitting out there, so it doesn't seem to be an issue.

5 JUDGE BIBLOWITZ: I've never --

6 MR. WEINSTOCK: Well, we have witnesses sitting out there.
7 I just want to check as to whether we're allowed to have one
8 person in the hearing room.

9 JUDGE BIBLOWITZ: Definitely. Now, let me ask a question.
10 Is there a demand for sequestration here? I haven't heard one
11 yet, but.

12 MR. BIRCHFIELD: Yes, that would, the Employer makes a
13 formal demand for sequestration.

14 JUDGE BIBLOWITZ: Okay, okay, then each person, each party
15 can have one person assisting them if you wish. You can have
16 someone from the Employer's side. You can have someone from the
17 Petitioner's side if you wish to assist you.

18 MR. WEINSTOCK: We'll have one person present. Well, I
19 might have one, he's not here yet and two are here. We're going
20 to take a break to get our witnesses lined up?

21 JUDGE BIBLOWITZ: Okay, we'll take only five minutes,
22 please. We'll resume at 9:40, with the first witness. Who is
23 the first witness going to be, do you know?

24 MS. VUJANOVIC: Dina Paolicelli.

25 JUDGE BIBLOWITZ: You said?

1 MS. VUJANOVIC: Dina Paolicelli, and I can spell that.

2 It's P-A-O --

3 JUDGE BIBLOWITZ: T-A-O.

4 MS. VUJANOVIC: "T" as in tall.

5 JUDGE BIBLOWITZ: Right.

6 MS. VUJANOVIC: A-O-L-I-C-E-L-L-I.

7 JUDGE BIBLOWITZ: And the first name is?

8 MS. VUJANOVIC: Dina, D-I-N-A.

9 JUDGE BIBLOWITZ: Dina, D-I-N-A.

10 MS. VUJANOVIC: Yes.

11 JUDGE BIBLOWITZ: Okay. Okay, thank you, just bring her
12 in and we'll -- only five minutes, please, let's keep this
13 moving.

14 **(Whereupon, a brief recess was taken)**

15 JUDGE BIBLOWITZ: Back on the record. Raise your right
16 hand, please.

17 Whereupon,

18 **DINA PAOLICELLI**

19 Having been first duly sworn, was called as a witness and
20 testified as follows:

21 JUDGE BIBLOWITZ: Sit right over there and we'll begin in
22 a moment. Your name is Dina, D-I-N-A?

23 THE WITNESS: Yes.

24 JUDGE BIBLOWITZ: And the last name, P-A-O-L-I-C-E-L-L-I.

25 THE WITNESS: Yes.

1 JUDGE BIBLOWITZ: And it's pronounced?

2 THE WITNESS: Paolicelli.

3 JUDGE BIBLOWITZ: Paolicelli, okay. Ms. Paolicelli,
4 you're going to be questioned by Mr. Birchfield, the attorney
5 for the Employer and then Mr. Weinstock, the attorney for the
6 Union and answer each question briefly and directly, yes or no
7 if that's what the question calls for.

8 THE WITNESS: Okay.

9 JUDGE BIBLOWITZ: Let go off the record for a moment.

10 **(Whereupon, a brief recess was taken)**

11 JUDGE BIBLOWITZ: Back on the record. Ms. Paolicelli has
12 been sworn. And Ms.?

13 MS. VUJANOVIC: Vujanovic.

14 JUDGE BIBLOWITZ: Ms. Vujanovic will question.

15 MR. WEINSTOCK: I'm going to need an additional chair for
16 an observer.

17 JUDGE BIBLOWITZ: Okay, Ms. Vujanovic.

18 MS. VUJANOVIC: Thank you.

19 **DIRECT EXAMINATION**

20 BY MS. VUJANOVIC:

21 Q Ms. Paolicelli, what's your educational background?

22 A I'm an RN.

23 Q Are you married?

24 A Yes.

25 Q And do you have children.

1 A I do.

2 Q How many children?

3 A Two.

4 Q And --

5 MR. WEINSTOCK: I'm going to object to what relevance that
6 has to this hearing.

7 JUDGE BIBLOWITZ: Is there any relevance to married and
8 children?

9 MS. VUJANOVIC: Just getting her kind of --

10 JUDGE BIBLOWITZ: Well, let's just cut to the chase.

11 BY MS. VUJANOVIC:

12 Q Where do you work, Ms. Paolicelli?

13 A Patient Care.

14 Q And what kind of company is Patient Care?

15 A A Medicare certified home health agency.

16 MR. WEINSTOCK: Could you speak up in front of the mike,
17 please?

18 THE WITNESS: Is it this one?

19 JUDGE BIBLOWITZ: Just try to --

20 THE WITNESS: Is that better, can you hear me?

21 JUDGE BIBLOWITZ: Well, just try to keep your voice up
22 because these ceilings --

23 THE WITNESS: Okay.

24 JUDGE BIBLOWITZ: Just keep your voice up.

25 THE WITNESS: Okay.

1 BY MS. VUJANOVIC:

2 Q What is your title at Patient Care?

3 A I'm the executive director.

4 Q What does that entail?

5 A I oversee the Pennsylvania branches for sales and
6 operations.

7 Q Does that include the office in Allentown?

8 A Yes.

9 Q How many employees work there in that office in Allentown?

10 A About 10.

11 Q About 10. And what type of employees, what are their
12 titles?

13 A We have clerical, RNs, LPNs, speech therapists,
14 occupational therapists, physical therapists and home health
15 aides.

16 Q And they, do you work in the Allentown office?

17 A One clerical works in the office full-time, and the others
18 visit patients in their homes.

19 Q Okay. Were you present on the day of the election on
20 April 30, 2013?

21 A Yes.

22 Q Where was the election held?

23 A In the Allentown branch.

24 Q And how familiar are you with that office?

25 A Very.

1 Q Have you ever been stationed at that location, have you
2 work, do you have an office there?

3 A I have an office there and I primarily work out of that
4 location for over three years.

5 MS. VUJANOVIC: Your Honor, may I approach the witness?

6 JUDGE BIBLOWITZ: Sure. Employer's what?

7 MS. VUJANOVIC: It's one.

8 BY MS. VUJANOVIC:

9 Q Can you identify that document that I've just handed you?

10 A Yes.

11 Q And what is it?

12 A A floor plan of the Allentown office.

13 Q And just to be clear is the Allentown office building
14 freestanding or is it within a larger office building?

15 A It's an office in an office, larger office building.

16 Q Okay. So, this is just the Patient Care office
17 facilities?

18 A Yes.

19 Q Is this the same building where the vote was held?

20 A Yes.

21 Q I noticed that there are measurements on this diagram.
22 Did you ever have occasion to verify whether or not these
23 measurements were correct?

24 A Yes.

25 Q And how did you do that?

1 A I measured them myself.

2 Q And are the measurements correct?

3 A Yes.

4 Q So, based on your years working in this office and
5 measuring, taking the measurements again is this in your opinion
6 an accurate diagram of the Patient Care offices where the vote
7 was conducted?

8 A Yes.

9 Q Okay.

10 MS. VUJANOVIC: I move to submit this exhibit into
11 evidence as Employer's One.

12 JUDGE BIBLOWITZ: Any objection?

13 MR. WEINSTOCK: We have no objection.

14 JUDGE BIBLOWITZ: Employer's One is received.

15 **(Employer Exhibit One identified and received)**

16 BY MS. VUJANOVIC:

17 Q Can you identify the entrance to the Patient Care office?

18 A Yes.

19 Q And where is that?

20 A It's right here.

21 Q Can you put, do you have a pen up there?

22 A I do not.

23 JUDGE BIBLOWITZ: Here's a pen.

24 THE WITNESS: Thank you.

25 BY MS. VUJANOVIC:

1 Q Can you put a "1", where the entrance to the office is?

2 A Yes.

3 Q Is there any other entrance or exit to the Patient Care
4 office?

5 A No.

6 Q And based on this diagram can you describe where the vote
7 took place?

8 A Yes.

9 Q And where did that happen?

10 A Right in this room.

11 Q Okay. Can you put a "2" at the door to that room?

12 A Yes.

13 JUDGE BIBLOWITZ: Which room is that? That's the right-
14 hand room in the middle?

15 THE WITNESS: Yes.

16 MS. DESA: Can she identify the dimensions? I can't see
17 from here.

18 JUDGE BIBLOWITZ: It's 10 by 5 by 14.

19 MS. DESA: Thank you.

20 BY MS. VUJANOVIC:

21 Q And just so we're all clear that half-moon diagram, kind
22 of diagram that is the only door to the room?

23 A Yes.

24 Q And that's the conference room is that correct?

25 A Yes.

- 1 Q I'd like to just so the court has some idea of the
2 facility discuss the room adjacent, the one that is 10 feet by
3 16 feet, what is that room used for?
- 4 A It's just a vacant office right now.
- 5 Q And let's go to the next room, 10 by 5 by 12?
- 6 A That's my office.
- 7 Q Okay. Can you put a "3" right there?
- 8 A Yes.
- 9 Q And the last room what is that used for?
- 10 A Storage and medical records.
- 11 Q Did you ever have occasion to measure the distance between
12 door one and door two?
- 13 A Yes.
- 14 Q And what is it?
- 15 A About 25 feet.
- 16 Q Turning back, okay, turning back to the day of the
17 election was there a pre-election schedule?
- 18 A Yes.
- 19 Q And when was that to take place?
- 20 A At 8:00 a.m. that morning.
- 21 Q And where was it scheduled to take place?
- 22 A It was in the conference room.
- 23 Q And did you attend the pre-election conference?
- 24 A I did.
- 25 Q Who else was present during the pre-election conference?

- 1 A The Board agent, Niobe Delp, she was our observer, Steve
2 Kraus from our corporate office, two consultants, myself, and
3 four Union representatives.
- 4 Q Do you recall their names, the Board and Union
5 representatives do you recall their names?
- 6 A I do not.
- 7 Q Can you describe them?
- 8 A They were four large men.
- 9 Q Okay. Was there a table in the room?
- 10 A Yes.
- 11 Q Do you know how large that table was?
- 12 A I do.
- 13 Q How large was that table?
- 14 A It's 8 feet long by 3 feet 8 inches wide.
- 15 Q And can you draw the table on that diagram?
- 16 A Yes.
- 17 Q And was there voting booth in there?
- 18 A Yes.
- 19 Q And what type of voting booth was it?
- 20 A It was metal stand that with a curtain.
- 21 Q So, it was freestanding. It was, okay.
- 22 A It was, yes.
- 23 Q And can you draw where that was placed on the diagram?
- 24 A Yes.
- 25 Q Did everyone sit inside the conference room during the

1 pre-election conference?

2 A No.

3 Q How many people did not?

4 A Two of the Union representatives were outside the room.

5 Q When the Board agent arrived did he discuss what was
6 expected at the election?

7 A Yes.

8 Q And were some of the things he talked about?

9 A He said that he was going to build the ballot box. He
10 would build the voting booth. He would go over some rules, give
11 us information on the observer and have a time piece.

12 Q And when, well we'll get to that in a minute. Do you
13 recall the Board agent mentioning any circumstances in which he
14 would close the polls early?

15 MR. WEINSTOCK: I'm going to object.

16 JUDGE BIBLOWITZ: Overruled. Did he say anything about
17 closing the polls early?

18 THE WITNESS: If all the voters had voted.

19 BY MS. VUJANOVIC:

20 Q Okay. Was there any discussion about where you would be
21 during the election?

22 A Yes.

23 Q And what was that discussion?

24 A We have to have a nurse in the office to answer the
25 patients' phone calls. So, I was going to be in my office with

1 the door closed and the blinds shut.

2 Q And so that was next with a "3" on this diagram? Did the
3 Board agent after the Union objected to that?

4 A He did.

5 Q And did they object?

6 A No.

7 Q Going back to what you said about designating the time
8 piece, what was the official time piece, did he show the
9 official time piece to you?

10 A Yes, his cell phone.

11 Q Do you recall what kind of phone that was?

12 A I think it was an iphone.

13 Q Okay. And why do you think that?

14 A I have an iphone and it looked just like it.

15 Q Okay. Was there a clock in the conference room?

16 A No.

17 Q And did you have your cell phone or your watch on you at
18 the time?

19 A No.

20 Q At some point did the Board agent tell everyone to leave?

21 A I think once he finished talking and then we all left.

22 Q And where did you go at that point?

23 A Into my office.

24 Q When were the polls scheduled to close?

25 A At 9:30.

1 Q And when did you return to the polling place?

2 A At 9:29.

3 Q Why did you return to the polling place a minute early?

4 A I was in my office and I heard gentlemen's voices outside
5 my door. I looked at my computer monitor screen and it said
6 9:29. I went over to my door and I didn't think it was, we had
7 one male voter but I heard multiple men's voices so I peeked
8 outside my blind of my office and saw two of the Union
9 representatives in the larger room. So, I immediately went out,
10 and I went into the voting area.

11 And two of the Union representatives were in talking with
12 the Board agent and our observer. And then everybody else
13 started coming in behind me and we all went into the conference
14 room.

15 Q After you walked into the conference room what happened?

16 A Everybody gathered around and the Board agent said he was
17 going to break the ballot box and start to count the ballots.
18 And he pulled the ballot box from one end of the table to the
19 center, and then as he was punching the top of the box and broke
20 the seal.

21 Niobe at the same time it seemed that she called the last
22 voter hadn't voted yet, who was in the main area with one of the
23 other clinical managers sitting on the desk, and he said the box
24 had already been, the seal had already been broken and she
25 couldn't vote.

1 Q And did you see Ms. Kasmiroski at that time?

2 A I did.

3 Q And was that the first time you had seen Ms. Kasmiroski
4 after leaving your office?

5 A When I looked back she was in that main room.

6 Q She was in that what?

7 A When I looked back from the conference room she was in
8 that main room.

9 Q Okay, okay. How much time elapsed in your mind between
10 the time you left your office and the time --

11 MR. WEINSTOCK: I'm going to object.

12 JUDGE BIBLOWITZ: Overruled.

13 BY MS. VUJANOVIC:

14 Q -- you saw Ms. Kasmiroski?

15 MR. WEINSTOCK: I object to in your mind.

16 JUDGE BIBLOWITZ: Overruled. How much time.

17 THE WITNESS: It's a very quick, it's a short area so
18 within 10 seconds I was in the conference room.

19 BY MS. VUJANOVIC:

20 Q So, the first time you saw Ms. Kasmiroski was 10 seconds
21 after you left your office.

22 MR. WEINSTOCK: That's not what she testified to.

23 MS. VUJANOVIC: I'm sorry.

24 BY MS. VUJANOVIC:

25 Q My question was how soon after you left your office did

1 you Ms. Kasmiroski?

2 A Oh, I'm sorry, probably about 20 to 30 seconds.

3 Q Did the Board agent ask the parties at any point whether
4 or not they would allow, they would agree to allow Ms.
5 Kasmiroski to vote?

6 A No, not that I remember.

7 Q Did the Board agent offer to allow Ms. Kasmiroski to vote
8 under challenge?

9 A I don't remember that.

10 Q Okay, but not to your knowledge?

11 A No.

12 MS. DESA: Objection.

13 JUDGE BIBLOWITZ: Okay.

14 MS. VUJANOVIC: Okay.

15 BY MS. VUJANOVIC:

16 Q Were you present for the vote count?

17 A I was.

18 Q And do you recall how many eligible voters there were?

19 A Eight.

20 Q And do you recall how many employees voted against
21 representation?

22 A Four.

23 Q Against representation?

24 A I'm sorry, three.

25 Q That's okay. Do you recall how many voted for

1 representation?

2 A Four.

3 Q Okay. And do you recall how many voters did not vote?

4 A One.

5 Q And that was Ms. Kasmiroski?

6 A Yes.

7 MS. VUJANOVIC: That's all I have of this witness.

8 JUDGE BIBLOWITZ: Mr. Weinstock.

9 MR. WEINSTOCK: Yes.

10 **CROSS EXAMINATION**

11 BY MR. WEINSTOCK:

12 Q Can I call you Dina?

13 A Sure, please.

14 Q At the election site did the, can an Employer have an
15 observer?

16 A Yes.

17 Q Who was your observer?

18 A Niobe Delp.

19 Q And what's the position of that person?

20 A She's a clinical team assistant, a clerical position.

21 Q And she was a voter?

22 A Yes.

23 Q What time did the pre-election conference start?

24 A At 8:00 a.m.

25 Q How do you know it was 8:00 a.m.?

- 1 A That's when we all entered the room.
- 2 Q You don't wear a watch?
- 3 A I don't.
- 4 Q And there's no clock in the conference room?
- 5 A No, there's not.
- 6 Q How do you know it was 8:00?
- 7 A I was in my office doing email and I guess I, I don't know
- 8 exactly what time it was.
- 9 Q And who is the Board agent when you held the election?
- 10 A That gentleman sitting there.
- 11 Q Do you know his name?
- 12 A David Rodriguez.
- 13 Q When did he start the actual conference, at 8:00?
- 14 A I believe it was 8:00.
- 15 Q And at that conference he instructed the observer as to
- 16 her role?
- 17 A Yes, he did.
- 18 Q The Union did not have an observer is that correct?
- 19 A That's correct.
- 20 Q And what instructions did he give the parties about when
- 21 to return to the election site?
- 22 A The vote was from 8:30 to 9:30, and he said not to return
- 23 before 9:30.
- 24 Q And the election conference took approximately how long?
- 25 A I don't know exactly. Approximately 20 minutes.

- 1 Q So, you went back to your office at 8:20?
- 2 A I don't know the exact time.
- 3 Q Do you have a clock in your office?
- 4 A I do not.
- 5 Q At the pre-election conference Board Agent Rodriguez told
- 6 you the official time piece would be his cell phone.
- 7 A Yes.
- 8 Q And he told you what time it was when he looked at the
- 9 cell phone?
- 10 A I think he did.
- 11 Q Okay. And what time was it?
- 12 A I don't remember.
- 13 Q And you did not set your time piece or your cell phone to
- 14 that same time as his, correct?
- 15 A I did not.
- 16 Q So, your time piece could have differed from his.
- 17 A It could have.
- 18 Q Now, you left your office at what time after to go to the
- 19 polls?
- 20 A I left my office at 9:29.
- 21 Q How do you know it was exactly at 9:29?
- 22 A That's what it said on the bottom screen on my computer
- 23 monitor, I was doing email.
- 24 Q And so the time piece you used was your computer?
- 25 A Yes, it was.

1 Q And the reason you left you heard some noise?

2 A I heard voices outside and I opened the blinds a little
3 bit and saw the Union representatives outside, so I felt it was
4 okay to go out.

5 Q So, when you left your office it was somewhat after 9:29.

6 A It was right around 9:29.

7 Q Well, it wasn't 9:29 on the button. It could have been 49
8 seconds, it took you seconds after that could it not?

9 A It could have.

10 Q And at that point in time you left your office you didn't
11 see any voter at that time did you?

12 A I didn't see the voter at that time, no.

13 Q And you walked from your office into the election
14 conference room?

15 A Yes.

16 Q And it took you approximately you're saying up to 30
17 seconds?

18 A No, no, up to 10 seconds, it's a quick walk right across.

19 Q When you walked did you have to walk near the Union
20 individuals?

21 A I did. I walked through passed two of them in the main
22 area, and then the other two were already in the conference
23 room.

24 Q Do you know which two were in the conference room?

25 A Yes.

1 Q Who?

2 A I don't know their names. I remember what their faces
3 looked like.

4 Q The gentleman to my right was one of the individuals that
5 were in the conference room?

6 A No, he was outside.

7 Q And when you went into the conference room where the
8 election was being, was conducted your observer was there as
9 well.

10 A Yes, she was.

11 Q Did you raise any issue about the time when you walked
12 into the conference room?

13 A I did not.

14 Q Why not?

15 A I didn't think I, I didn't think to.

16 Q I'm sorry?

17 A I didn't think to.

18 Q Did your observer raise any issue about the time?

19 A Not in front of me, no.

20 Q And when you walked in the box was still intact, correct?

21 A It was.

22 Q But somewhere between the time you walked in and the time
23 you spotted a voter the box had been broken open.

24 A It, it felt like the same time he hit the top of the box,
25 the observer announced the voter to come and vote.

1 Q The observer announced it.

2 A Yes.

3 Q And did Mr. Rodriguez say anything?

4 A I don't remember exactly what he said, but I remember
5 something to the effect, well, the seal has already been broken
6 and she couldn't vote, but I don't remember exactly, his exact
7 words.

8 Q But the seal was broken was it not?

9 A The top of the seal was cracked but the box was not
10 broken.

11 Q Could you see the ballots?

12 A I could not.

13 Q Do you know what color the ballots were?

14 A I, after they came out they were pink and blue maybe.

15 I'm, I'm not --

16 Q You're not sure?

17 A I'm not sure.

18 Q And would you describe the dimensions of the box?

19 A Approximately 12 inches long and maybe 6 or 8 inches wide.

20 Q And so when he, did he punch it on the top or on the side?

21 A I don't know, he just punched the top of the box, but I
22 don't know if that was the top or the side. He just punched it
23 from the top.

24 Q And after he punched it did he take the ballots out?

25 A No, he paused because that's when Niobe said that the

1 voter was there.

2 Q What is the first thing if anything the voter said?

3 A I don't remember her saying anything.

4 Q You don't recall her saying she thought the vote closed at
5 10:00?

6 MS. VUJANOVIC: Objection, asked and answered.

7 JUDGE BIBLOWITZ: Well, you can ask. Did she say anything
8 about she thought the voting closed at 10:00?

9 THE WITNESS: I, she did say to, I think she said, I don't
10 remember closing at 10:00. I thought she said it started at
11 9:30.

12 BY MR. WEINSTOCK:

13 Q She thought it started at 9:30.

14 A Yes.

15 Q But nothing about 10:00?

16 A I don't remember 10:00. I remember 9:30.

17 Q Did anyone respond to her statement that she thought it
18 started at 9:30?

19 MS. VUJANOVIC: Objection, hearsay.

20 JUDGE BIBLOWITZ: Overruled.

21 THE WITNESS: I don't remember.

22 BY MR. WEINSTOCK:

23 Q You don't remember.

24 MS. VUJANOVIC: I think the witness nodded.

25 JUDGE BIBLOWITZ: She said she doesn't remember.

1 THE WITNESS: I said I don't remember.

2 BY MR. WEINSTOCK:

3 Q Again who else was present with you when you saw the
4 observer, saw the voter?

5 A Everybody was in the same room.

6 Q Tell me again who was there at that point time that you
7 recall?

8 A We were all, everybody that was, that I mentioned that was
9 in the room there was two Union representatives outside the
10 room, and Roberta was standing next to my clinical manager Dawn.

11 JUDGE BIBLOWITZ: In the room?

12 THE WITNESS: Outside the room.

13 JUDGE BIBLOWITZ: Outside the room.

14 BY MR. WEINSTOCK:

15 Q So, inside the room you had your observer, your, the
16 company observer.

17 A Inside the conference room?

18 Q Yes, inside the conference room.

19 A Okay. It's the same people I mentioned earlier. We had
20 myself in the doorway. In the room was Niobe, the Board agent,
21 the two Union representatives, the two consultants, Steve Kraus,
22 and I think that was it.

23 Q Are you testifying during the time, approximately 9:30,
24 you were in the doorway?

25 A I had, I was standing in the doorway and then had come out

1 when Niobe said that Roberta was, needed to vote I went out of
2 the room.

3 Q Where was that doorway when you went out of the room?

4 A Uh --

5 Q Do you want to put a number or something on that diagram?

6 A Yeah.

7 Q Put initials there.

8 A Okay.

9 Q Put "RK", please, where she was when you first saw her.

10 Can you then show us where you put the initials?

11 A Yes. There's a desk right here. And there's two desks.

12 MR. WEINSTOCK: Excuse me, may I approach?

13 BY MR. WEINSTOCK:

14 Q It's right above to the left of where it says "36 feet".

15 A There's a desk here and a desk here, and she was standing
16 over here with my clinical manager at this desk.

17 Q So, she was approximately 20 feet away from the door?

18 A From which door?

19 Q From the door where you were.

20 JUDGE BIBLOWITZ: From the entrance to the election area.

21 BY MR. WEINSTOCK:

22 Q Right.

23 A About, yes, 15 to 20 feet.

24 Q Was she wearing a watch?

25 A I have no idea.

1 Q I'm sorry?

2 A I don't, I don't know.

3 Q Did she have a cell phone?

4 A I don't know.

5 Q Did she comment as to what the time was when she was
6 there?

7 JUDGE BIBLOWITZ: She already testified she said at some
8 point she thought it started at 9:30.

9 BY MR. WEINSTOCK:

10 Q Right, but I'm just, did she comment as to what time it
11 was when she was there as to whether it was 9:40-9:45?

12 A I don't remember anything.

13 Q You don't remember that.

14 A I don't remember that.

15 Q There's been a document that was signed by your observer
16 and it was done the day of the election. Were you there when
17 she signed that document?

18 A I don't know what you're referring to.

19 Q I'm referring to in the official papers there's a document
20 called "A Tally of Ballots". I'll show it to you. Do you see
21 the signature that's on behalf of the Employer?

22 A Excuse me, yes.

23 Q Whose signature is that?

24 A Me.

25 Q And you signed that?

1 A Yes.

2 Q Did you raise any objection with the Board agent, Mr.
3 Rodriguez, before you signed this document?

4 A I did not.

5 Q Why not?

6 A I didn't know that I could.

7 Q But you did sign it knowing full well that you had an
8 issue about a vote?

9 A Yes.

10 Q Did you ever raise the issue about a challenged ballot at
11 the election?

12 A No.

13 Q Did anyone on your behalf ever raise the issue about a
14 challenged ballot?

15 A No.

16 MR. WEINSTOCK: I have no additional questions.

17 JUDGE BIBLOWITZ: Ms. Desa, any questions of this witness?

18 MS. DESA: Yes, Your Honor.

19 **CROSS EXAMINATION**

20 BY MS. DESA:

21 Q Ms. Paolicelli --

22 MR. WEINSTOCK: I'm sorry, did you give a statement to the
23 NLRB?

24 THE WITNESS: I don't think so.

25 MR. WEINSTOCK: You never signed an affidavit or a board

1 statement?

2 THE WITNESS: I don't know.

3 MR. WEINSTOCK: If you did I would ask that the General
4 Counsel provide it.

5 JUDGE BIBLOWITZ: Not General Counsel, the Board agent,
6 the board representative, regional representative. Ms. Desa.

7 MS. DESA: Yes, Your Honor.

8 BY MS. DESA:

9 Q Ms. Paolicelli, when you, as you were walking away from
10 your desk and your computer screen to go into the building area
11 did you at any point look at your iphone?

12 A I don't know think so.

13 Q And when you entered the polling area what was Mr.
14 Rodriguez doing exactly?

15 A He was speaking with the two Union representatives and
16 Niobe, the observer.

17 Q What was he saying?

18 A I don't remember.

19 MS. DESA: I've no more questions.

20 JUDGE BIBLOWITZ: that's it?

21 MS. DESA: That's it for me.

22 JUDGE BIBLOWITZ: Any redirect?

23 MS. VUJANOVIC: Yes.

24 **REDIRECT EXAMINATION**

25 BY MS. VUJANOVIC:

1 Q At any point do you recall hearing Mr. Rodriguez announce
2 that the polls are closed?

3 A I don't remember hearing that.

4 Q And counsel repeatedly asked you questions saying at
5 approximately 9:30, is it your testimony that you saw Ms.
6 Kasmiroski after 9:30 or before 9:30?

7 JUDGE BIBLOWITZ: If you know.

8 BY MS. VUJANOVIC:

9 Q If you know.

10 A I, I don't know.

11 Q What time did you leave your office?

12 A At 9:29.

13 Q Approximately how many seconds elapsed between the time
14 you left your office and you saw Ms. Kasmiroski?

15 A I don't know exactly, maybe 30, 40 seconds.

16 Q So, as counsel said it's conceivable that it was 9:29, but
17 you saw the clock strike 9:29 right when it did, and you saw Ms.
18 Kasmiroski at 9:29, is that correct?

19 MR. WEINSTOCK: I'm going to object to saying conceivable.

20 MS. VUJANOVIC: Okay.

21 BY MS. VUJANOVIC:

22 Q How many elections have you participated in before this
23 election?

24 A None.

25 Q Were you comfortable with the experience?

1 A No, terribly uncomfortable.

2 Q Why were you so uncomfortable?

3 MR. WEINSTOCK: I'm going to object.

4 MS. VUJANOVIC: Your Honor, it goes to her --

5 JUDGE BIBLOWITZ: Her subjective feelings about it

6 MS. VUJANOVIC: Your Honor, opposing counsel brought in
7 information about why she didn't object at the time. And I'm
8 just trying to address why she didn't object at the time.

9 JUDGE BIBLOWITZ: My recollection is there was no
10 objection to that question, that's why I allowed it. I didn't
11 see the relevance there either.

12 MS. VUJANOVIC: Okay, that's all.

13 JUDGE BIBLOWITZ: That's it.

14 MS. VUJANOVIC: That's it.

15 JUDGE BIBLOWITZ: Anything further?

16 MS. DESA: No, Your Honor.

17 MR. WEINSTOCK: Nothing.

18 JUDGE BIBLOWITZ: Thank you for coming.

19 THE WITNESS: Thank you.

20 (Witness excused)

21 JUDGE BIBLOWITZ: Your next witness is?

22 MS. VUJANOVIC: Our next witness is Ms. Kasmiroski. I'll
23 be right back.

24 JUDGE BIBLOWITZ: Okay, thank you. Off the record for a
25 moment.

1 **(Whereupon, a brief recess was taken)**

2 JUDGE BIBLOWITZ: Back on the record. Step up here,
3 please.

4 Whereupon,

5 **ROBERTA KASMIROSKI**

6 Having been first duly sworn, was called as a witness and
7 testified as follows:

8 JUDGE BIBLOWITZ: Please be seated over here. Watch your
9 step. And your first name is Roberta?

10 THE WITNESS: Yes.

11 JUDGE BIBLOWITZ: And the last name is spelled
12 K-A-S-M-I-R-O-S-K-I.

13 THE WITNESS: Yes.

14 JUDGE BIBLOWITZ: Ms. Kasmiroski, you will be questioned
15 first by Ms. Vujanovic, the attorney for the Employer, then by
16 Mr. Weinstock for the Union. Please answer each question
17 briefly and directly, yes or no if that's what the question
18 calls for. Don't try to explain anything unless one of the
19 lawyers asks for an explanation. And because of these ceiling
20 heights and the distance they are away please keep your voice up
21 so that we can hear what you have to say. Okay, please.

22 **DIRECT EXAMINATION**

23 BY MS. VUJANOVIC:

24 Q Are you familiar with Patient Care?

25 A Yes.

- 1 Q And how are you familiar with Patient Care?
- 2 A I am a PRN Speech Therapist for them.
- 3 Q And what is your educational background?
- 4 A I have a Bachelor's and two Master's Degrees.
- 5 Q How long have you worked for Patient Care?
- 6 A About six months.
- 7 Q And where are they working?
- 8 A In Allentown.
- 9 Q Pennsylvania?
- 10 A Yes.
- 11 Q And do you see patients?
- 12 A Pardon me? I'm having trouble hearing you.
- 13 Q I'm sorry, I'll talk louder. That's usually not the
- 14 problem. Do you see patients?
- 15 A Yes.
- 16 Q And where do you see patients?
- 17 A In their homes.
- 18 Q How often would you say that you report to the Allentown
- 19 office?
- 20 A Not very often, maybe once every six weeks or so just to
- 21 pick up paperwork.
- 22 Q Turning your attention to April 30, 2013, were you aware
- 23 of an election being held for the employees of Patient Care?
- 24 A Yes.
- 25 Q And to your knowledge were you an eligible voter?

1 A Yes.

2 Q What were the voting hours?

3 A From 8:30 to 9:30.

4 Q And did you plan to vote in that election?

5 A Yes.

6 Q Do you have another job in addition to the position you
7 hold with Patient Care?

8 MR. WEINSTOCK: I'm going to object to relevance.

9 JUDGE BIBLOWITZ: Overruled.

10 THE WITNESS: Yes.

11 BY MS. VUJANOVIC:

12 Q And what is that position?

13 A I'm a rehab director for HCR Manor Care.

14 Q And what does that entail?

15 A It entails supervising staff of 12 clinicians, managing
16 12, I'm sorry, 18 accounts where I have to visit all of these on
17 a fairly regular basis. I live in my car.

18 Q Okay. What were you doing on the morning of the election?

19 A Preparing for the end of month close.

20 Q And were you doing that for Patient Care or for Manor
21 Care?

22 A Manor Care.

23 Q And what did that entail preparing for the end of year, or
24 end of month close?

25 A Making sure that all of the clinicians have their schedule

1 with the patients that need to be seen that day in, following
2 the orders and making sure that all of those, all of the
3 paperwork has been faxed to the multiple locations where my
4 staff go, and that's about it.

5 Q Were your tasks that morning time sensitive?

6 A Oh, yes.

7 Q When did you begin that task?

8 MR. WEINSTOCK: Again, I'll object to relevance.

9 JUDGE BIBLOWITZ: The question again, I couldn't hear you.

10 MS. VUJANOVIC: What time did you begin that task?

11 JUDGE BIBLOWITZ: Oh, sustained. Let's move on.

12 MS. VUJANOVIC: Your Honor, I'm going to why she arrived
13 at the polls at the time she did.

14 BY MS. VUJANOVIC:

15 Q Do you recall when you completed your tasks that morning?

16 A Around 9:00.

17 Q And where were you working that morning?

18 A I worked out of my home office to get all of this
19 paperwork out.

20 Q Is that where you normally work on Monday?

21 A No.

22 Q Why did you choose to work at your home office that
23 morning?

24 MR. WEINSTOCK: Again I would object to relevance.

25 JUDGE BIBLOWITZ: Overruled.

1 THE WITNESS: Because my building location is on, at, at
2 US 22, which is on the opposite side of town from where Patient
3 Care would be located. Had I gone to my office it would have
4 taken me 20 to 25 minutes to get there, do all of the work, come
5 back, bypass my house and then another 20 minutes to get to
6 Patient Care.

7 Since I knew that I had to get all of this paperwork out
8 and faxed to my staff, I thought it made more sense to do that
9 task from my home which put me much closer to Patient Care so I
10 wouldn't lose travel time.

11 BY MS. VUJANOVIC:

12 Q And were you going to Patient Care that day for any other
13 reason except for the election?

14 A No.

15 Q And you said you completed your tasks at 9:00 a.m. that
16 morning. What did you do next?

17 A I packed up my things for the day and I drove to Patient
18 Care.

19 Q And how long does it take to get to Patient Care from your
20 house?

21 A About 20 minutes.

22 Q So, that would leave you about a 10 minute window to vote,
23 were you nervous about making it so close?

24 A No.

25 Q And why was that?

1 A Because I drive that route so frequently that I know
2 exactly how long it takes me to get from point A to point B.

3 Q And what happened when you arrived at the Allentown
4 facility to vote?

5 A I came in the door and I noticed a group of people mostly
6 men, I didn't know them, standing outside of the conference room
7 door. I could see the head of a gentleman inside of the door.
8 It seemed like there was a lot of commotion going on. And I was
9 confused, so I looked at my phone and it said 9:29. There also
10 happens to be a clock just like that on the wall inside the door
11 and I looked at the two and they were the same.

12 At that point I heard a female voice. I'm not sure who it
13 was. Somebody said there is another eligible voter here. And
14 then there was more sounded like confusion, conversation within
15 the group. And the next thing I heard was the board agent
16 saying that the poll was closed because he had broken the seal.
17 So, then I just stood there for a few minutes not knowing what
18 to do.

19 Q Okay. We heard testimony earlier that you stated I
20 thought it started at --

21 MR. WEINSTOCK: I'm going to object.

22 JUDGE BIBLOWITZ: Overruled.

23 BY MS. VUJANOVIC:

24 Q Do you recall making that statement?

25 A I said I thought it ended at 9:30. I thought I still had

1 a minute or so to go.

2 Q At any time, would you have voted if you were allowed to
3 by the board agent?

4 A Oh, most definitely.

5 Q At any time did the board agent offer to allow you to vote
6 under challenge?

7 A Never spoke to him.

8 Q Okay. Are you aware of whether or not he asked the
9 parties to allow you to vote?

10 A I don't know.

11 Q Would you have voted under challenge if given the
12 opportunity?

13 A Yes.

14 MS. VUJANOVIC: That's all I have.

15 JUDGE BIBLOWITZ: Mr. Weinstock. Mr. Weinstock, the
16 attorney for the Union will question you next.

17 THE WITNESS: Okay.

18 **CROSS EXAMINATION**

19 BY MR. WEINSTOCK:

20 Q How do you know that, the time of the election?

21 A I was told that by Patient Care.

22 Q Who from Patient Care?

23 A Oh, I'm sorry, Dina.

24 Q When did she tell you that?

25 A Probably a week or so before, plus there was a mailer that

1 went out.

2 Q Didn't you see notices posted at your work location?

3 A My work location?

4 Q At the location of the, anywhere?

5 A There might have been. I didn't see them. When I come
6 into the office it's merely to get paperwork which is on the
7 opposite side of the room. I get what I need, I leave.

8 Q There's been a diagram marked Employer One, is that in
9 front of you?

10 A Oh.

11 Q Where do you go when you come into the office?

12 A Wait, which way does this go? This way.

13 JUDGE BIBLOWITZ: The entry is on the top where it says --

14 THE WITNESS: Oh, that's the door?

15 JUDGE BIBLOWITZ: Right

16 THE WITNESS: Okay. There are in the center here shelves
17 that have the clinician paperwork on, such as such and such. I
18 usually just speak to the person sitting at the desk and say I'm
19 out of speech paperwork, can I have this, this and this. So, I
20 never proceed beyond this point because that's where the
21 paperwork is and then I leave.

22 BY MR. WEINSTOCK:

23 Q But you were told by the executive director the election
24 was between 9:30 and 10:00?

25 THE WITNESS: No.

1 MS. VUJANOVIC: Objection.

2 BY MR. WEINSTOCK:

3 Q I'm sorry, 8:30 and 9:30.

4 A Right.

5 Q And that was approximately two weeks before the election?

6 A I do not remember exactly but it was prior to the
7 election.

8 Q Do you where she told you?

9 A She called me.

10 Q I'm sorry?

11 A She called me.

12 Q She called you.

13 JUDGE BIBLOWITZ: And she testified that she also got a
14 mailing --

15 THE WITNESS: And I got a mailer.

16 BY MR. WEINSTOCK:

17 Q You received mailings did you not?

18 A One letter.

19 Q And from the Employer?

20 A From Patient Care reminding, as a reminder please attend
21 on this date.

22 Q Did you receive any mailings from the Union?

23 A No.

24 Q Looking at that diagram you entered where it says "1"?

25 A Yes.

- 1 Q And when did you check the clock that was on the wall?
- 2 A When I came in the room.
- 3 Q Which room?
- 4 A Well, where the door is.
- 5 Q Where what one is?
- 6 A Where one is.
- 7 Q Okay.
- 8 A There's a, you don't have it drawn. There's a
- 9 receptionist desk right there. I saw that there was a lot of
- 10 commotion outside of the conference room, had my phone, looked
- 11 at it, and there's a clock right there. I caught that out of
- 12 the corner of my eye and looked at it and saw that I still had a
- 13 minute to go.
- 14 Q Well, why did you think you had a minute to go?
- 15 A Because the, the voting times were from 8:30 to 9:30, and
- 16 my clock said 9:29, my phone.
- 17 Q It doesn't have tenths of a second on your clock or the
- 18 other clock does it?
- 19 A Not that I know of, it's a Blackberry.
- 20 Q And when you looked at that clock and your cell phone
- 21 where were you standing?
- 22 A Right inside number one.
- 23 Q Right inside number one.
- 24 A Come into number one, close the door and move a little bit
- 25 to the left so right in this general area.

1 Q And again I'm going, I don't see what you're pointing to.

2 It's out by number one?

3 A Okay. Number one is the door. You come in the door, move
4 maybe a foot or two to the left.

5 Q How far were you from the conference room?

6 A I'm not good at calculating foot, square footage. From
7 there to the conference room, I don't know, is that 10, 12 feet?
8 I'm, I'm not a good guesstimater.

9 Q And did you see Dina somewhere?

10 A I could see the back of her head.

11 Q And where was she?

12 A In the cluster of people standing outside the door.

13 Q She was where the number two is?

14 A Yes.

15 Q And who else was there?

16 A A bunch of other people.

17 Q Can you identify anybody?

18 A Not so, most of their heads were back, to the back of me
19 and mostly men. I didn't know any of them.

20 Q Did you look at the clock before you saw Dina?

21 A I looked at the clock when I walked in the door and saw
22 that there was some commotion. I didn't know what was going on
23 so I glanced at my phone and then I caught the clock out of the
24 corner of eye so I turned to see if they were both the same and
25 they were.

1 Q Okay.

2 A I didn't spot Dina immediately, then I turned my attention
3 back to the crowd and I also heard the voice saying we have
4 another potential voter, and that's when I said, oh, there's
5 Dina's, back of her head.

6 Q So, you heard Dina's voice?

7 A Yes, I believe it was Dina's voice.

8 Q Well, you saw Dina you said.

9 A Back of her head.

10 Q And you, after you looked at your cell phone and looked at
11 the clock then immediately you saw Dina.

12 MS. VUJANOVIC: Objection, Your Honor, we've gone over
13 this a couple of times.

14 JUDGE BIBLOWITZ: Yes, we've gone over this a couple of
15 times. Sustained.

16 BY MR. WEINSTOCK:

17 Q There was another female present in the conference room,
18 correct?

19 A If there was I couldn't see them.

20 Q You never saw another individual?

21 A In the conference room?

22 MS. VUJANOVIC: Objection, Your Honor, again --

23 JUDGE BIBLOWITZ: Sustained.

24 MR. WEINSTOCK: As to who she saw in a conference room?

25 JUDGE BIBLOWITZ: You asked her, she said I didn't see

1 anyone. Then you said --

2 BY MR. WEINSTOCK:

3 Q Well, did you eventually get to the conference room?

4 A No, I never left my, I, no, I never made it that far.

5 Q So, you never left that spot up by number one?

6 A I moved over out of the doorway area just in case other
7 people needed to come in or leave. I didn't want to be blocking
8 the door. There are desks along the wall here, so I moved over
9 and leaned against the desk and waited. I never went beyond the
10 desk.

11 Q Did you ever have any words with the NLRB election
12 officer?

13 A No.

14 Q Did you see him?

15 A Is that the person standing at the table?

16 Q The gentleman to my right, seated to my right.

17 A I saw his head.

18 Q And what was he doing?

19 A Well, I couldn't see his body or his hands so I don't
20 know, but he did say that he had broken the seal and the polls
21 were closed. And at that point he started pulling out the
22 ballots.

23 Q So, you entered the conference room.

24 A No, I can see --

25 MS. VUJANOVIC: Objection, Your Honor.

1 THE WITNESS: -- from here.

2 JUDGE BIBLOWITZ: Overruled.

3 BY MR. WEINSTOCK:

4 Q So, you heard him say.

5 A I heard him say.

6 Q You heard him say. Now, it's your testimony you never
7 said anything about the time out loud that day.

8 MS. VUJANOVIC: Objection, Your Honor, that wasn't her
9 testimony.

10 MR. WEINSTOCK: That she didn't --

11 JUDGE BIBLOWITZ: She didn't testify to that.

12 BY MR. WEINSTOCK:

13 Q What did you say about the time?

14 JUDGE BIBLOWITZ: If anything? Did you say anything about
15 the time while you were standing there?

16 THE WITNESS: I thought I had until 9:30.

17 JUDGE BIBLOWITZ: Oh, okay.

18 BY MR. WEINSTOCK:

19 Q I'm sorry, you thought the polls closed at 9:30?

20 A Yeah, when I looked at my clock, my phone and it said
21 9:29, I thought I had until 9:30.

22 Q So, at no point in time did you say you thought the
23 election was over at 10:00?

24 A No.

25 Q And you never said to anyone that you thought the polls

1 would be open until 10:00?

2 A No.

3 Q Did you give a statement to the NLRB?

4 A Again, that's?

5 Q And affidavit or a statement that was supplied to the
6 NLRB?

7 A And who is NLRB?

8 MS. VUJANOVIC: That's us.

9 THE WITNESS: No.

10 MS. VUJANOVIC: She, yes, we provided --

11 THE WITNESS: Oh, well --

12 MR. WEINSTOCK: She had said no she didn't.

13 THE WITNESS: I don't know.

14 JUDGE BIBLOWITZ: You said to the NLRB.

15 MS. VUJANOVIC: She didn't provide to the NLRB. She
16 provided that to us.

17 MR. WEINSTOCK: Who provided --

18 MS. VUJANOVIC: We provided this to the NLRB.

19 THE WITNESS: The only contact I've had is with Claire.
20 I've never spoken to them directly.

21 MR. WEINSTOCK: I would request a copy of the statement in
22 the NLRB file.

23 JUDGE BIBLOWITZ: Okay. Is there a statement in the NLRB
24 file?

25 MS. DESA: Yes, Your Honor. My understanding is that the

1 Employer was to have copies of affidavits to turn over to
2 counsel if they were going to call the witnesses.

3 MS. VUJANOVIC: I'm sorry, Your Honor, I don't have copies
4 of the affidavit. I have one copy but I was under the
5 impression that the NLRB would provide copies of all affidavits.

6 MS. DESA: Since we don't really know, I mean, who they're
7 calling I have one copy in my file that I can show to Mr.
8 Weinstock.

9 JUDGE BIBLOWITZ: Okay.

10 MS. DESA: But that's the best I can do.

11 JUDGE BIBLOWITZ: Let's show it to Mr. Weinstock. Let's
12 go off the record for a moment.

13 **(Whereupon, a brief recess was taken)**

14 JUDGE BIBLOWITZ: Back on the record.

15 MR. WEINSTOCK: I'd like to have this marked as
16 Petitioner's One.

17 JUDGE BIBLOWITZ: Petitioner's Exhibit One, okay.

18 **(Petitioner Exhibit One identified)**

19 MS. VUJANOVIC: Your Honor, is that the only copy?

20 MR. WEINSTOCK: The board agent has a copy in the file.
21 We'll make copies.

22 MS. VUJANOVIC: I, this is not, I mean the only thing that
23 I'd like you to look at while you're asking --

24 MR. WEINSTOCK: Well, we can share.

25 MS. VUJANOVIC: Okay. I'm going to have a witness

1 identify it.

2 JUDGE BIBLOWITZ: Okay.

3 MS. VUJANOVIC: I would imagine that the court downstairs
4 has a copier.

5 JUDGE BIBLOWITZ: Well, let's see if we can move this
6 along. Ms. Kasmiroski, you'll be shown what is a statement,
7 tell us if that's the affidavit, the statement that you gave to
8 the Employer's attorneys? It's been marked as Petitioner's
9 Exhibit One, does that look familiar?

10 THE WITNESS: Uh-huh.

11 JUDGE BIBLOWITZ: That's a yes?

12 THE WITNESS: Yes.

13 JUDGE BIBLOWITZ: Okay. You'll be questioned --

14 MR. WEINSTOCK: First of all --

15 MS. VUJANOVIC: What --

16 JUDGE BIBLOWITZ: Ms. Desa, can they use your affidavit
17 while they question, while the witness has a --

18 MS. DESA: Sure, I won't have anything to look at either
19 but --

20 JUDGE BIBLOWITZ: Okay.

21 MS. DESA: Why don't I do that, we'll all be together.

22 JUDGE BIBLOWITZ: Okay. Is the mike on? Okay.

23 BY MR. WEINSTOCK:

24 Q Can you identify --

25 MS. VUJANOVIC: Your Honor, I guess I'd like to put an

1 objection on the record. I'm not really sure that this is the
2 proper for this document particularly as an exhibit. She
3 testified that, I mean I suspect that there are portions of this
4 he wants to question. But I guess I don't see admitting it as
5 an exhibit or --

6 MR. WEINSTOCK: That hasn't been offered yet.

7 JUDGE BIBLOWITZ: He may not even, he's certainly entitled
8 to question a witness about she said in the affidavit. He
9 hasn't moved it into evidence and may not.

10 MS. VUJANOVIC: Yes, Your Honor.

11 JUDGE BIBLOWITZ: Mr. Weinstock.

12 BY MR. WEINSTOCK:

13 Q Yes, can you identify the document that you have in your
14 hand that's marked as Petitioner's One?

15 A Yes.

16 Q What, what, is that your affidavit you gave to the
17 Employer's attorney?

18 A Yes.

19 Q And you signed it on page two?

20 A Yes.

21 Q And that's your signature. And initials next to your
22 signature, whose are they do you know?

23 A Oh, you mean the "MS"?

24 Q Yes.

25 A Those are my credentials.

- 1 Q All three?
- 2 A Oh, yes.
- 3 Q And then it was notarized on page three.
- 4 A Yes.
- 5 Q You swore that this was true and correct.
- 6 A Yes.
- 7 Q Would you point out to me anywhere where you mentioned a
8 wall clock being present that you checked?
- 9 A No, I remembered that afterwards, that's when we were
10 going over this, times on here.
- 11 Q You testified you did see the observer, Ms. Delp.
- 12 A Yes.
- 13 Q Ms. Delp, she was the Employer's observer. Well, I'll ask
14 it again. Did you see her in the election area? You don't have
15 to look at that, it's your recollection, you testified you did
16 not see her though.
- 17 A Wait, who?
- 18 Q The Employer observer her name is Nicole Delp.
- 19 A Niobe.
- 20 Q Oh, I'm sorry, Niobe Delp.
- 21 A When you entered the room there are two desks here. One
22 is the receptionist area in which Niobe, sorry I didn't know her
23 last name, sits there. The second desk is Dawn Dry, who is the
24 clinical manager sits there. One I entered the room I did see
25 them. They were not in the activity that was going over, going

1 over by the conference room.

2 Q Where did you Niobe Delp?

3 A Well, you see her the minute you walk into the room.

4 She's right in the first desk.

5 Q So, she was not in the election area.

6 A Not that I recall.

7 Q You heard you say something did you not?

8 A I heard Dina. I heard a female's voice and with all of
9 the confusion I couldn't tell exactly who was talking. And then
10 Dina, from the back of her head I was able to deduce that that
11 was Dina who said we had another person here. And I don't
12 honestly do not remember if Niobe got up and walked over to Dina
13 or not. I don't remember.

14 Q So, you're saying Dina didn't say anything.

15 A When?

16 Q At any point in time.

17 A No, that's not what I said.

18 Q I'm sorry?

19 A That's not what I said.

20 JUDGE BIBLOWITZ: That's not what she said. She said Dina
21 said we have another voter, so we have --

22 MR. WEINSTOCK: No, she's saying they both --

23 JUDGE BIBLOWITZ: -- another person.

24 MR. WEINSTOCK: -- said that now.

25 THE WITNESS: We have another voter.

1 BY MR. WEINSTOCK:

2 Q Nicole, Niobe, Niobe Delp.

3 MS. VUJANOVIC: Objection, Your Honor, we keep going over
4 this.

5 JUDGE BIBLOWITZ: Yes, we're going around and around and
6 around. Wait, wait, let me, let me rule before you interrupt.
7 We're going around and around and around. You've asked this a
8 number of times and she's answered it, and you keep asking it
9 again.

10 MR. WEINSTOCK: No, I got different answers, Your Honor.

11 JUDGE BIBLOWITZ: No, you didn't.

12 MR. WEINSTOCK: Niobe Delp said something about a voter.
13 And her original testimony was that the, Dina said something
14 about a voter.

15 MS. VUJANOVIC: Your Honor, I feel Petitioner's counsel is
16 trying to trick her by saying -

17 JUDGE BIBLOWITZ: My recollection is she heard a voice
18 which she thought was Dina saying we have another voter. And I
19 don't remember her ever saying it was Niobe who said it.

20 BY MR. WEINSTOCK:

21 Q Niobe didn't say anything, is that what you're saying?

22 A I do not remember specifically if she did or not. I heard
23 a female voice emanating from the area of the conference room
24 that said we have another eligible voter and he never merged
25 from the crowd. I adduced that it was Dina who made that

1 statement simply via proximity.

2 Q Can you read number nine into the record, please?

3 A "As I was checking the time on my cell phone observer
4 Niobe Delp noticed me and told the board agent that I had
5 arrived to vote".

6 Q Is that correct?

7 JUDGE BIBLOWITZ: Now, as you think about it now can you
8 identify --

9 THE WITNESS: As I think about it now she told somebody.
10 I don't know if she told a board agent or she was informing Dina
11 because she was here, the crowd was here including Dina, she
12 went past and walked over and informed someone in that crowd
13 that I was there. Then I heard a voice saying we have another
14 eligible voter and that was audible to me. And it came from
15 that area. I saw Dina's, the back of her head and then she
16 merged through the crowd and I adduced that that was her, it
17 sounded like her voice.

18 BY MR. WEINSTOCK:

19 Q Isn't it true that you just testified --

20 MS. VUJANOVIC: Your Honor.

21 JUDGE BIBLOWITZ: Well, let's go on, sustained.

22 MR. WEINSTOCK: I'm not on that. I'm on another one, Your
23 Honor.

24 BY MR. WEINSTOCK:

25 Q But you didn't see the board agent, you just saw his head?

1 A From the neck up.

2 Q Could you read number eight into the record? Could you
3 read it, please?

4 A Yes. "I could see the board agent sitting at a desk in
5 the conference room with the box in his hand, but at a point I
6 looked at my cell phone, 9:29. He was standing."

7 Q So, he wasn't sitting.

8 A He was not sitting, at least I don't believe so. It's
9 been 60 days since this happened that I recall. I could only
10 see his head so I'm going to deduce from that, too, that he was
11 standing. He may have been sitting initially and then, sir, I
12 honestly don't recall.

13 Q Was the box in his hand, did you see the box in his hand?

14 A No.

15 Q I'm sorry?

16 A No.

17 Q That's not true?

18 A I don't remember exactly. The box was in the room on the
19 conference table, he said he broke the seal.

20 Q And did you see the seal broke?

21 A Oh, no, he had already said that he had already done that.

22 Q Then did you see it?

23 A No, I couldn't see it, there were people in front of me
24 and also he said he had already done it which he might have done
25 it before I got there.

1 Q So, you never even saw the box in his hand?

2 A I saw the lid come off because he picked it up and he
3 raised it. And again this is all action over the top of other
4 people's heads when he pulled the ballots out he also raised
5 them up. So, I could see those above people's heads.

6 MR. WEINSTOCK: I would offer Petitioner's One and --

7 MS. VUJANOVIC: Your Honor, we object. There's only two
8 paragraphs that he's talking about.

9 MR. WEINSTOCK: No, there's more I don't want to spend the
10 time.

11 JUDGE BIBLOWITZ: You have to speak to the mike. You've
12 got to stand back. You object?

13 MS. VUJANOVIC: Yes, Your Honor, I object.

14 JUDGE BIBLOWITZ: Okay, I agree. She's read the
15 affidavits in the record. It doesn't serve any purpose to add
16 the affidavit to the record.

17 MR. WEINSTOCK: Well, there's other items I didn't --

18 JUDGE BIBLOWITZ: Well, then ask --

19 MR. WEINSTOCK: I'll do that then. Oh, I'm sorry.

20 BY MR. WEINSTOCK:

21 Q Did you see the board agent remove the tape from the box?

22 A No.

23 Q Read number 11 into the record.

24 A "The board agent was removing the tape from the box as he
25 spoke. The box was not open and no ballots were removed. He

1 was stating that he was doing this. I did not see it." Again,
2 he had everything --

3 Q No, there's no question.

4 A Okay.

5 Q Wait for the question.

6 A Okay.

7 Q Did anyone ever tell you that the official time piece was
8 the board agent cell phone?

9 A No.

10 Q Do you know what time was on his cell phone when you were
11 there?

12 A No.

13 Q Did you hear the board agent say, "Oh, well, I just opened
14 the box so she will not be able to vote"?

15 A I heard him, if those, if those are his exact words I
16 don't recall. I do recall him saying that he had broken the
17 seal and he was closing the polls, that he would not allow me to
18 vote.

19 MR. WEINSTOCK: Thank you.

20 JUDGE BIBLOWITZ: Ms. Desa, any questions?

21 MS. DESA: No, Your Honor.

22 JUDGE BIBLOWITZ: No, and no questions? Ms. Desa, did I
23 ask you if you have any questions?

24 MS. DESA: You did, Your Honor and I said I don't.

25 JUDGE BIBLOWITZ: Okay.

1 MS. DESA: Thank you.

2 JUDGE BIBLOWITZ: Any redirect?

3 MR. WEINSTOCK: Just a moment, please.

4 JUDGE BIBLOWITZ: Sure. Anything else?

5 MS. VUJANOVIC: Yes, Your Honor.

6 **REDIRECT EXAMINATION**

7 BY MS. VUJANOVIC:

8 Q Were you subpoenaed to be here?

9 A Yes.

10 Q At the time that you're describing the moment you looked
11 at the watch --

12 A Uh-huh.

13 Q -- to when you heard the board agent speak was that a long
14 period of time or a brief period of time?

15 A No, it was brief.

16 MS. DESA: Objection.

17 JUDGE BIBLOWITZ: Overruled.

18 BY MS. VUJANOVIC:

19 Q Would you call that time chaotic?

20 MR. WEINSTOCK: I'm going to object.

21 JUDGE BIBLOWITZ: Sustained.

22 MS. VUJANOVIC: That's all for this witness.

23 JUDGE BIBLOWITZ: Okay. Thank you. Thanks for coming.
24 You're excused. Thank you.

25 **(Witness excused)**

1 JUDGE BIBLOWITZ: Your next witness will be? Let's go off
2 the record.

3 (Whereupon, a brief recess was taken)

4 JUDGE BIBLOWITZ: Let's go back on the record. Will you
5 raise your right hand.

6 Whereupon,

7 NIOBE DELP

8 Having been first duly sworn, was called as a witness and
9 testified as follows:

10 JUDGE BIBLOWITZ: Please be seated. Step up there and
11 just be careful of these wires. Delp, D-E-L-T, is your last
12 name?

13 THE WITNESS: D-E-L-P.

14 JUDGE BIBLOWITZ: D-E-L-P, I'm sorry. I won't be
15 questioning you until the last attorney comes but you will be
16 questioned first by the attorneys for the Employer, and the
17 attorney for the Union Mr. Weinstock, and then the labor board
18 is Ms. Desa. Answer each question briefly and directly, to a
19 yes or no question answer yes or no and stop. Don't explain
20 anything unless one of the lawyers asks for an explanation.

21 And you can tell by the size of this room and the ceilings
22 you have to speak up, keep your voice up.

23 THE WITNESS: Yes.

24 JUDGE BIBLOWITZ: So, we'll go off the record until Ms.
25 Vujanovic is here. Here she is. When she sits down we'll

1 begin. Ms. Vujanovic, I've sworn in the witness, and we're
2 waiting for you as soon as you're ready. Ms. Delp is already
3 for you. And your first name is N-I-O-B-E.

4 THE WITNESS: That's correct.

5 JUDGE BIBLOWITZ: And D-E-L-P.

6 THE WITNESS: Correct.

7 JUDGE BIBLOWITZ: Okay, thank you.

8 **DIRECT EXAMINATION**

9 BY MS. VUJANOVIC:

10 Q Ms. Delp, where do you work?

11 A I work at Patient Care.

12 Q And what type of things do you do there?

13 A I handle the payroll as well as I enter data such as
14 orders and other documents.

15 Q Were you present at the election that occurred on April
16 30, 2013?

17 A I was.

18 Q And when was the voting scheduled to begin?

19 A At 8:30.

20 Q Do you know whether there was a pre-election conference
21 scheduled to take place?

22 A Yes.

23 Q And when was that scheduled?

24 A At 8:00, I'm sorry, 8:00.

25 Q And where?

1 A At 8:00, conference room, the same room where the election
2 was held.

3 Q Did you attend the pre-election conference?

4 A I did.

5 Q Who else was present during the pre-election conference?

6 A The board, the board agent.

7 Q Yes.

8 A The two, there were four gentlemen in the room at the time
9 from the Union, Dina Paolicelli, Steve Kraus and Mick Crowley
10 and myself.

11 Q And why did you attend that pre-election conference?

12 A I was asked by the company to represent them as a, a --

13 JUDGE BIBLOWITZ: Observer?

14 THE WITNESS: Thank you, observer.

15 BY MS. VUJANOVIC:

16 Q Starting with the pre-election conference did the board
17 agent review what he expected of you as an observer?

18 A Yes.

19 Q Did he describe your responsibilities?

20 A Yes.

21 Q Did he describe any circumstances in which the polls could
22 be closed early?

23 A Yes.

24 Q And under what circumstances could that happen?

25 A If the all the people who had, if all the people who were

- 1 to vote voted we then could close the, the polls early.
- 2 Q And did the board agent designate an official time piece?
- 3 A He did.
- 4 Q And what was that?
- 5 A It was his, his phone.
- 6 Q Okay.
- 7 A Cell phone.
- 8 Q And was there a clock in the conference room?
- 9 A There was not.
- 10 Q Were you wearing a watch yourself?
- 11 A I was not.
- 12 Q What happened after the board agent identified the
- 13 official time piece?
- 14 A He then asked everybody to leave the room, to leave the
- 15 office now because, and they must be in the office at all times.
- 16 Dina stayed in the office, in her office behind a closed and
- 17 locked door for that hour, but everybody else left the office.
- 18 Q And what time did the polls open?
- 19 A At 8:30.
- 20 Q Did the board agent ever state the polls are open?
- 21 A Yes, he did.
- 22 Q And where was he when he did that?
- 23 A He was by the door.
- 24 Q Of the conference room?
- 25 A That's correct.

1 Q Were you two talking towards the end of the polling time?

2 A We were.

3 Q And how did that conversation end?

4 A I remember being interrupted as he said that it's almost
5 9:29, and I'm going to be closing the polls soon. Just as he
6 said that the gentleman from the Union were at the door,
7 motioning to come in. I turned to him. I asked him if it was
8 okay that they come in, he said yes. I motioned to the
9 gentlemen to come in. And just as they were coming into the
10 conference room I then saw Dina Paolicelli coming into the
11 conference room as well as Mick Crowley and Steve Kraus.

12 And while that was going on the board agent was coming
13 around the table with the box that he was punching in. As soon
14 as he punched it in turned around and there was Ms. Kasmiroski
15 waiting to vote. I let him know that she was here and he said
16 it's too late the box has already been opened.

17 Q Had you looked at the box? Well, let me ask you this way.
18 Were the ballots all out?

19 A No.

20 Q What did he have to do to take the ballots out after that?

21 A In order to show that the box was completely empty he had
22 to open the box this way as well as the opposite way and then
23 pull them out.

24 Q Do you recall the board agent ever walking to the door and
25 saying the same way the polls are closed?

1 A I don't recall that.

2 Q How much time would you say elapsed between the time the
3 board agent said it was 9:29 and the moment you saw Ms.
4 Kasmiroski?

5 A No more than 35 seconds.

6 Q Did the board agent ask the parties whether they would
7 agree to allow Ms. Kasmiroski to vote?

8 A Did not.

9 Q Did the board agent offer too let Ms. Kasmiroski vote on
10 her challenge?

11 A No.

12 Q Were you present for the vote count?

13 A I was.

14 Q And do you recall how many eligible voters there were?

15 A There were --

16 MR. WEINSTOCK: Objection.

17 JUDGE BIBLOWITZ: I don't think we have to go through
18 that, that's been established, that's in the record in the
19 formal papers.

20 MS. VUJANOVIC: Okay.

21 BY MS. VUJANOVIC:

22 Q From the time the board agent said 9:29 to the time you
23 saw Ms. Kasmiroski did you ever leave the conference room?

24 A I did not.

25 JUDGE BIBLOWITZ: Is that it ?

1 MS. VUJANOVIC: That's all for this witness.

2 JUDGE BIBLOWITZ: You're going to be questioned by Mr.
3 Weinstock who is the attorney for the Union.

4 MR. WEINSTOCK: Did you give an affidavit to the Employer
5 about what you observed?

6 THE WITNESS: I did.

7 MR. WEINSTOCK: May I see a copy of it, please?

8 JUDGE BIBLOWITZ: Yes.

9 MS. VUJANOVIC: We made a copy for you now.

10 MR. WEINSTOCK: I have a copy. We're making progress. I
11 need a break, five minutes.

12 JUDGE BIBLOWITZ: Five minutes, okay. Let's go off the
13 record for five minutes.

14 **(Whereupon, a brief recess was taken)**

15 JUDGE BIBLOWITZ: Back on the record. Ms. Delp, you'll be
16 questioned now by Mr. Weinstock the attorney for the Union.
17 Okay, Mr. Weinstock. Mr. Weinstock, it will be easier if you
18 had another copy that you could leave with the witness.

19 MR. WEINSTOCK: I will.

20 JUDGE BIBLOWITZ: Okay, thank you.

21 **CROSS EXAMINATION**

22 BY MR. WEINSTOCK:

23 Q When were you selected to be the observer at the elect

24 A Approximately a week to a week and a half before the
25 election?

1 Q You knew the time of the election was 8:30 to 9:30?

2 A I did.

3 Q How did you know that?

4 A Because I was told.

5 Q Did you see it posted at the Employer's place of business?

6 JUDGE BIBLOWITZ: Did you see a board notice on --

7 THE WITNESS: I received, I received a letter from Dina
8 Paolicelli telling me when it would be held from 8:30 to 9:30.

9 BY MR. WEINSTOCK:

10 Q You also saw an election notice by the NLRB.

11 JUDGE BIBLOWITZ: Do you remember that at the place of,
12 the thing that says, who's going to vote and what time the
13 election would be and what date, board notice?

14 THE WITNESS: I believe I do.

15 BY MR. WEINSTOCK:

16 Q At the pre-election conference you were present as the
17 observer for the company correct?

18 A That's correct.

19 Q The Union did not have an observer.

20 A That is correct.

21 Q So, during the voting times just you and the NLRB when the
22 polls were open were present?

23 A That's correct.

24 Q And you were not wearing a watch correct?

25 A I was not.

- 1 Q And you didn't have a cell phone.
- 2 A I did not.
- 3 Q Did you see a clock anywhere on the premises?
- 4 A I did not.
- 5 Q To your knowledge is there a clock somewhere in the
- 6 vicinity of that conference room?
- 7 A There is around the door in the front of the office.
- 8 Q But you didn't look at that clock when --
- 9 A I did not --
- 10 Q -- that morning?
- 11 A No.
- 12 Q Okay. Now, the board agent just told you the official
- 13 time piece was his cell phone.
- 14 A That is correct.
- 15 Q And did he tell you it was now 8:20 when he said that or
- 16 what did he say?
- 17 A It is now 8:29, I'm going to ask everybody to leave the
- 18 office so that we can open the polls, or it was 8:29, 8:25, so
- 19 that we could get things moving along.
- 20 Q Did he mention the time again toward the end of the
- 21 polling period?
- 22 A Absolutely.
- 23 Q More than once or once?
- 24 A Once.
- 25 Q And what did he say?

- 1 A We were talking and --
- 2 Q We, you and him?
- 3 A He and I were talking and as I said he cut me off to tell
- 4 me that it was 9, almost 9:29 and that he was going to be
- 5 closing the polls soon.
- 6 Q And you're sure he used the word "almost"?
- 7 A Absolutely.
- 8 Q And he was looking at his cell phone?
- 9 A Yes, he was.
- 10 Q So, the cell phone would either say 9:28 or 9:29 would it
- 11 not?
- 12 A He was looking at his cell phone and he said it's almost
- 13 9:29 and we need to close the polls soon.
- 14 Q In your statement to the board or to your Employer you
- 15 said it was 9:29, not almost 9:29, correct?
- 16 A I did.
- 17 Q Why?
- 18 A I don't know why.
- 19 Q But today you're saying he said almost 9:29.
- 20 A That is correct.
- 21 Q After he announced the time what else did he say?
- 22 A He said he would be closing the polls soon.
- 23 Q And then did he say the polls were closed?
- 24 A I don't remember that.
- 25 Q You're not sure whether he said it or not?

- 1 A I'm saying I don't remember.
- 2 Q Do you object to him closing the polls?
- 3 A I did not.
- 4 Q You knew at the time being an observer that seven of the
- 5 eight had voted.
- 6 A I did.
- 7 Q And what point in time did you see Roberta and where?
- 8 A It was after everybody had just come into the office and
- 9 right after Mr. Rodriguez had punched in the box.
- 10 Q And where did you see Roberta at that time?
- 11 A I saw her in the office outside the conference room.
- 12 Q Looking at the diagram in front of you that's been marked
- 13 I believe Employer's One?
- 14 A Uh-huh.
- 15 Q Do you see where her initials are?
- 16 A Yes.
- 17 Q Is that where you saw her?
- 18 A Yes.
- 19 Q So, she was approximately 20 feet away, 25 feet?
- 20 A No.
- 21 Q How close was she?
- 22 A It was more like about 15 feet.
- 23 Q Fifteen feet away, and what was she doing?
- 24 A She was standing there that I know of.
- 25 Q She wasn't trying to enter the election area?

- 1 A Well, I mentioned to the gentleman, I'm sorry, to Mr.
2 Rodriguez that our last voter is here and he said it's too late,
3 the box is already open.
- 4 Q And she was 15 feet away at that point in time.
- 5 A Yes.
- 6 Q And did he tell you anything about the time?
- 7 A He didn't say anything about the time.
- 8 Q Did you ask him to check the official time piece?
- 9 A I'm sorry?
- 10 Q Did you ask him to check the official time piece --
- 11 A I did not.
- 12 Q -- as to what the time was?
- 13 A I did not.
- 14 Q At what point did Dina come into the area?
- 15 A It was right after the gentleman from the Union walked in
16 from outside the office.
- 17 Q Seconds after that or?
- 18 A Seconds.
- 19 Q And did she say anything?
- 20 A No, but she looked perturbed.
- 21 Q But she didn't say anything.
- 22 A No.
- 23 Q Did she say anything at all between the time that you saw
24 her at that point in time from the time the election might have
25 ended?

- 1 A No.
- 2 Q You don't recall her saying anything?
- 3 A No.
- 4 Q Did Roberta have a conversation with Dina in your
5 presence?
- 6 A No, she did not.
- 7 Q Roberta have a conversation with you?
- 8 A I'm sorry, I misunderstood the question before.
- 9 Q Did Roberta have any conversation with you?
- 10 A She did not.
- 11 Q Did you hear her say anything?
- 12 A No.
- 13 Q You didn't hear her say that she thought the polls closed
14 at 10:00?
- 15 A I was not, I, I did not hear that.
- 16 Q And you never heard her say anything that she was there on
17 time?
- 18 A I didn't hear that either.
- 19 Q Did she ever ask the board agent to, that, whether she
20 could vote?
- 21 A No, she did not.
- 22 Q Did she ask for a challenged ballot?
- 23 A Not to my knowledge.
- 24 Q Do you know where Steve Kraus and Mick Crowley were during
25 election time?

1 A During the election time I know they were outside the
2 office.

3 Q Were they in Dina's office?

4 A No, they had gone outside the office with Dawn Dry, who is
5 the supervisor and left the office.

6 Q But they arrived the same time the Union agents arrived.

7 A They arrived within, within 10 to 15 seconds after, yes.

8 Q Do you know who they are?

9 A Do I know who?

10 Q Steven Kraus and Mick Crowley.

11 A I do.

12 Q Who are they?

13 A Mr. Kraus is sitting next to you on your left, and Mick
14 Crowley is the representative for Steve Kraus.

15 Q Do you want to describe the dimensions of the box?

16 A The dimensions of the box maybe about the size of this
17 paper.

18 Q It's 8½ by 11?

19 A I'm sorry.

20 Q It's 8½ by 11?

21 A Yes, 8½ by 11 by maybe two inches.

22 Q How many inches?

23 A Probably about two inches.

24 Q And was it taped?

25 A It was.

- 1 Q And how did the board agent open the box?
- 2 A He held the box up like this and punched into it like
- 3 that.
- 4 Q He held the, held up in his hand?
- 5 A He held it in his hand.
- 6 Q About chest high or?
- 7 A About like this.
- 8 Q But straight out.
- 9 A Straight out.
- 10 Q Straight out, and with the other hand --
- 11 A Whichever hand he punched in, the area where the tape was
- 12 on the back.
- 13 Q Okay. And did the ballots come out?
- 14 A No.
- 15 Q And at that point in time is when you said something about
- 16 another voter?
- 17 A Yes.
- 18 Q So, the box was punched open already?
- 19 A It was punched open but none of the ballots were out.
- 20 Q Did you ask him to check the time?
- 21 A I did not.
- 22 MS. VUJANOVIC: Asked and answered, Your Honor.
- 23 JUDGE BIBLOWITZ: It was, sustained.
- 24 BY MR. WEINSTOCK:
- 25 Q At the end of the election you signed a document about the

1 election certifying the result, I'm sorry. You signed a
2 document.

3 JUDGE BIBLOWITZ: It's in evidence.

4 MR. WEINSTOCK: Yes. Well, I want to make sure it's her
5 signature.

6 JUDGE BIBLOWITZ: But it's been, it's formal papers so
7 it's not necessary.

8 MR. WEINSTOCK: We have a stipulation it's her signature
9 that what I was going to ask, okay. I have no additional
10 questions, Your Honor.

11 JUDGE BIBLOWITZ: Ms. Desa, any questions of this witness?

12 MS. DESA: Yes.

13 **CROSS EXAMINATION**

14 BY MS. DESA:

15 Q What's Mr. Kraus' title?

16 A He's a human resources representative at Almost Family.

17 Q What is Mr. Mick Crowley's title?

18 A I'm not sure what his title is.

19 Q Did you vote in the election?

20 A I did.

21 Q What time was it when you voted?

22 A I'm going to say right after 8:30, or right at 8:30, could
23 be.

24 Q And how much time elapsed between the opening of the polls
25 and the time that you voted?

1 A Seconds, 30 seconds at the most.

2 Q Had anyone voted before you?

3 A No.

4 Q And were you present in the conference room the entire
5 time, from the time that Mr. Rodriguez closed the polls until
6 everyone left and the tally was distributed?

7 A Yes.

8 Q And please tell us what Mr. Rodriguez did from the time
9 that he closed the polls until the time that the --

10 MS. VUJANOVIC: Objection, Your Honor, assumes he closed
11 the polls.

12 JUDGE BIBLOWITZ: When you say closed the polls.

13 MS. DESA: Make, announce that the polls were closed.

14 MS. VUJANOVIC: Objection, Your Honor, there's no
15 testimony that he did that.

16 JUDGE BIBLOWITZ: Well --

17 MS. DESA: Mr. Rodriguez closed the polls.

18 THE WITNESS: I'm not aware of that.

19 BY MS. DESA:

20 Q So, Mr. Rodriguez did not make an announcement that the
21 polls were closed?

22 A Not that I'm aware of, no.

23 Q Tell us what Mr. Rodriguez did?

24 JUDGE BIBLOWITZ: From the time he punched in the ballot
25 box?

1 MS. DESA: No, no, no.

2 BY MS. DESA:

3 Q From the time, from the time that he purportedly announced
4 that it was 9:29.

5 A He reported that it was almost 9:29. And again please
6 request, if you ask the question one more time?

7 Q Please tell us what Mr. Rodriguez did, in the order in
8 which he did it from the time that he announced it's almost
9 9:29, until the tally was distributed.

10 A Okay. He reported that it was almost 9:29, and he was
11 going to be closing the polls, and he went over to the box to
12 seal the box, took it around the side of the, his side of the
13 table, of the back part of the table and punched in the box.

14 Q Did Mr. Rodriguez say anything to those present before he
15 punched the box?

16 A I don't recall.

17 Q When you were served as an observer did Mr. Rodriguez give
18 you a badge that said "observer"?

19 A Yes.

20 Q Do you still have that badge?

21 A No, I do not, I gave it back.

22 Q And you gave back to whom?

23 A To Mr. Rodriguez.

24 Q Did you do that, at what point did you do that?

25 A After everything was done.

1 Q What do you mean by that?

2 A Everything when, when, after the tally of the votes and so
3 forth, when we were leaving the, right when we were ready to
4 leave the office I handed back the badge.

5 MS. DESA: I have no other questions.

6 JUDGE BIBLOWITZ: Okay. Any redirect, Ms. Vujanovic?

7 MS. VUJANOVIC: Just one.

8 **REDIRECT EXAMINATION**

9 BY MS. VUJANOVIC:

10 Q So, just for one moment, the representative from the NLRB
11 asked what the board agent has done during that period of time.
12 But from the moment, I'm just curious, from the moment the board
13 agent Rodriguez said it's almost 9:29 until the Union reps came
14 in or you saw the Union rep, how much time elapsed?

15 A Five seconds.

16 Q Do you recall prior to counting the ballots whether or not
17 board agent Rodriguez walked outside and moved that directional
18 sign?

19 A I don't remember that.

20 MS. VUJANOVIC: No further questions.

21 JUDGE BIBLOWITZ: Anything else, Mr. Weinstock?

22 MR. WEINSTOCK: Yes.

23 **RECROSS EXAMINATION**

24 BY MR. WEINSTOCK:

25 Q The Union representatives asked whether they could come

1 into the voting area did they not?

2 A They did.

3 Q And what did Mr. Rodriguez say?

4 A He said yes.

5 Q And at that time it was after 9:30.

6 A No --

7 MS. VUJANOVIC: Objection.

8 THE WITNESS: -- it was not.

9 BY MR. WEINSTOCK:

10 Q What time was it?

11 A It was, it was literally five seconds after he said it was
12 almost 9:29.

13 Q But you do recall, do you know who it was who asked
14 whether they could come into the room?

15 A I do remember their faces. I know that they were the
16 Union representatives.

17 Q And they were told they could come in.

18 A They were told they could come in.

19 Q And they did come in.

20 A They came in.

21 MR. WEINSTOCK: Thank you.

22 JUDGE BIBLOWITZ: Okay, thank you, Ms. Delp. You're
23 excused. Thanks for coming.

24 THE WITNESS: Thank you.

25 (Witness excused)

1 JUDGE BIBLOWITZ: The next witness will be, is there
2 another witness?

3 MS. VUJANOVIC: We have no further witnesses at this time.

4 JUDGE BIBLOWITZ: Excuse me? No further witnesses, okay.
5 Mr. Weinstock.

6 MR. WEINSTOCK: Yes.

7 JUDGE BIBLOWITZ: You have a witness for us?

8 MR. WEINSTOCK: We have witnesses, yes.

9 JUDGE BIBLOWITZ: Okay. Are you ready for who would the
10 first witness be?

11 MR. WEINSTOCK: Can we have a five minute break?

12 JUDGE BIBLOWITZ: Five minutes, okay. We'll resume at
13 11:30.

14 **(Whereupon, a brief recess was taken)**

15 JUDGE BIBLOWITZ: Let's go back on the record.
16 Whereupon,

17 **CHARLES CLARKE**

18 Having been first duly sworn, was called as a witness and
19 testified as follows:

20 JUDGE BIBLOWITZ: Charles Clarke, right?

21 THE WITNESS: Yes.

22 JUDGE BIBLOWITZ: Okay, Mr. Clarke, you've been here.
23 You've heard what I told witnesses.

24 THE WITNESS: Yes.

25 JUDGE BIBLOWITZ: Please do the same and you'll be

1 questioned by Mr. Weinstock.

2 **DIRECT EXAMINATION**

3 BY MR. WEINSTOCK:

4 Q State your full name, please.

5 A Charles Clarke.

6 Q And your business address.

7 A It's 317 North Washington Street, Wilkes Barre,
8 Pennsylvania 18705.

9 Q And what, by whom are you employed?

10 A I'm employed Local 1310, Laborers International Union of
11 North America.

12 Q And what is your position?

13 A I'm a organizer for the local.

14 Q Directing your attention to the date of April 30, 2013,
15 where were you?

16 A I was in Allentown for an election with Almost Patient
17 Care.

18 Q Do you recall a pre-election conference?

19 A I do.

20 Q Can you tell the judge what occurred at the pre-election
21 conference?

22 A The board agent, Mr. Rodriguez, went through procedures of
23 how the protocol for the election and what would take place,
24 that the polls would be open from 8:30 to 9:30. He gave
25 instructions to the observers. We did not have an observer. He

1 showed us that, he informed us that his official time piece
2 would be his cell phone.

3 Q And did you have any type of time piece?

4 A I did.

5 Q What was your time piece?

6 A My cell phone.

7 Q Did he check as to what time his time piece said versus
8 yours?

9 A He said his time showed what he was, his time piece showed
10 8:20, at that time I looked at my phone.

11 Q And what did yours say?

12 A 8:20.

13 Q And then did he ask you to leave?

14 A Yeah, about, it was a couple of minutes went by. He said,
15 you know, everybody left, the company representatives and, and
16 us.

17 Q Do you recall who was present for the pre-election
18 conference?

19 A Yes. The three gentlemen that I was with, Dina
20 Paolicelli, the observer. There was a secretary in the office.
21 And then there was I believe three gentlemen for the company.

22 Q And did you leave the premises at around that time 8:20?

23 A Yes.

24 Q And where did you go?

25 A We went to Dunkin' Donuts.

- 1 Q And where is Dunkin' Donuts located?
- 2 A I don't --
- 3 Q Approximately how far away?
- 4 A Maybe a mile or two.
- 5 Q And did you at some point come back to the facility?
- 6 A Yes.
- 7 Q What time did you leave Dunkin' Donuts?
- 8 A Approximately 9:20.
- 9 Q And you drove back?
- 10 A Yes.
- 11 Q How many people were in the car?
- 12 A Four.
- 13 Q Tell us what happened next?
- 14 A We got to the parking lot. I believe one of the gentlemen
- 15 had a cigarette. We were parked, I don't know, approximately it
- 16 looked like about a football field away from the entrance to the
- 17 building. It's a big office building. We were in a corner
- 18 parking lot by the trees. I looked at my phone it said 9:28,
- 19 and we started ahead towards the building.
- 20 Q How far away from the building?
- 21 A It looked like about a football field.
- 22 Q Football field?
- 23 A Yeah.
- 24 Q About 300 yards, 100 yards?
- 25 A About 100 yards.

1 Q Okay. And was the election being conducted on the first
2 floor of that building?

3 A No, it was not.

4 Q Where was it being conducted?

5 A In the basement level.

6 Q And tell us what you did when you left the car.

7 A Well, we walked into the building. I, the four of us came
8 into the building. We walked over. There's an elevator back in
9 the stairwell. You have to walk to the middle of the building.
10 I went down the stairwell, came out, we came out. I went into
11 the bathroom, came back out into the hallway. And then we went
12 into the office.

13 Q Did you check your clock?

14 A Yes.

15 Q What time was it?

16 A It was 9:31.

17 Q What did you do next?

18 A Well, I followed the other gentlemen into the office.

19 Q And tell us what you observed in the office, who was
20 there?

21 A Again, the secretary at the desk, board agent, the
22 observer, and Ms. Paolicelli. She came in kind of relatively
23 close to us. We were kind of there and then she kind of came
24 in.

25 Q Who is that?

- 1 A Dina Paolicelli.
- 2 Q Dina, okay. And tell us what occurred next?
- 3 A The board agent said the polls were closed. And then he
- 4 said we'd wait for the company representatives to come, too.
- 5 Q And did he wait?
- 6 A Yes.
- 7 Q And did the representatives show up?
- 8 A Yes.
- 9 Q And then what happened?
- 10 A And then he, he went on and he talked about how the
- 11 closing of the polls what would take place, like that it was a
- 12 he went over that it was a globe election, and it would be two
- 13 separate ballots. He would count the one set first, second set.
- 14 I believe he, he also closed up the polling station, too.
- 15 Q The actual polling booth.
- 16 A Right.
- 17 Q He closed it back up.
- 18 A Right.
- 19 Q And then what happened?
- 20 A And then he came over and then he talked about why the, he
- 21 went over the election again. And then he talked about he was
- 22 going to start, he punched the box and he's ready to go.
- 23 Q He punched the box, the voting box.
- 24 A Right.
- 25 Q And what happened?

1 A At that point in time when he punched the box, I guess her
2 name is Roberta Kasmiroski came in the door.

3 Q And what was said?

4 A Dina Paolicelli was in the doorway. She turned around,
5 came back to her and walked back to the doorway and said, you
6 know, we have another voter here.

7 Q What time was that?

8 A About 9:39.

9 Q 9:39.

10 A 9:39.

11 Q And who said there's another voter here?

12 A Dina.

13 Q Dina, okay, and then what took place?

14 A The board agent said that he couldn't allow her to vote
15 because he already opened the box.

16 Q And was the box already open?

17 A I couldn't, I couldn't see that.

18 Q Where were you?

19 A I was actually just outside the conference room, and Dina
20 was in the doorway, so I couldn't see the box. I couldn't see
21 that the box was open. I did hear him punch it. I didn't see
22 him punch the box but I couldn't see that it was open.

23 Q You saw him punch the box but didn't see it open.

24 A Right.

25 Q Who was inside the room from the Union if anybody?

1 A Julio Palomo, and Svitilla.

2 Q Were you in the election area at any time before 9:30?

3 A No.

4 Q And did you hear Roberta make any comments at all?

5 A Yes.

6 Q What did you hear her say?

7 MR. BIRCHFIELD: Objection, hearsay.

8 JUDGE BIBLOWITZ: Overruled.

9 THE WITNESS: She said I thought I had until 10:00 to
10 Dina.

11 BY MR. WEINSTOCK:

12 Q Did you block the entrance way in any way to the election?

13 A I did not.

14 Q Did you notice anyone blocking the entranceway?

15 A No.

16 MR. WEINSTOCK: I have no additional questions.

17 JUDGE BIBLOWITZ: You'll now be questioned by the
18 Employer's attorney. Will that be --

19 MR. BIRCHFIELD: That would be me.

20 JUDGE BIBLOWITZ: Okay, Mr. Birchfield.

21 MR. BIRCHFIELD: Did this witness give an affidavit to the
22 Union or to the board?

23 MR. WEINSTOCK: I have none.

24 **CROSS EXAMINATION**

25 BY MR. BIRCHFIELD:

- 1 Q Did you give an affidavit to anybody --
- 2 A No.
- 3 Q -- prior to this hearing?
- 4 A No.
- 5 Q Have you met with the board's attorney prior to this?
- 6 A No.
- 7 Q You said that when you returned to the polling area you
- 8 had done so after meeting at the Dunkin' Donuts is that right?
- 9 A That's correct.
- 10 Q And I believe you testified that you arrived to the
- 11 conference room before the company representatives got there
- 12 correct?
- 13 A Correct.
- 14 Q And while you were not in the room at the time, two of
- 15 your colleagues from the Union were in the conference room
- 16 correct?
- 17 A Correct.
- 18 Q So, when the company representatives arrived you were
- 19 already in the room, or they --
- 20 A They were already in the room.
- 21 Q -- were already in the room.
- 22 A They, two gentlemen were in the room, and two gentlemen
- 23 were outside the room.
- 24 Q And that was you and somebody else. Who was with you
- 25 outside the room?

1 A Tom Borum he's the business manager for the local.

2 Q Now, at that point in time when the company
3 representatives got there, and I believe we're talking about Mr.
4 Kraus and Mr. Crowley, do you recognize Mr. Kraus --

5 A I do.

6 Q -- as being one of the company representatives --

7 A I do

8 Q -- and seated to my right?

9 A I do.

10 Q When they got there was Ms., I can't pronounce her name,
11 Paolicelli, Dina Paolicelli was she in the conference room when
12 Mr. Kraus arrived?

13 A She was there, I don't recall if she was actually inside
14 the room. She was, she was kind, she's always kind of in and
15 out of the room.

16 Q When you walked in did, would it be fair to say that Ms.
17 Paolicelli came out of her office almost immediately and met you
18 or was right on your heels as you walked into that conference
19 room?

20 A She would have been coming from my side, my right.

21 Q Right.

22 A But I think our gentlemen were there first prior to her
23 coming.

24 Q So, you had arrived first and then she, like I said she
25 was right on her heels.

- 1 A Within, within seconds.
- 2 Q Okay. Now, was there a, do you recall if there was a
3 election notice on the outside of the room that --
- 4 A I don't.
- 5 Q -- said this is polling area?
- 6 A I don't.
- 7 Q Now, do you recall the board agent taking that down?
- 8 A I don't.
- 9 Q Was, it wasn't up when you arrived though was it?
- 10 A The, I, I don't recall if was up there. Are you talking
11 about the notice of the election or the --
- 12 Q Yes, the polling area that indicated that this is, you
13 know.
- 14 A I don't recall if that was up.
- 15 Q So, you never saw the board agent actually take that down.
- 16 A I don't recall that.
- 17 Q Now, this election, the eligibility list that's one of the
18 official documents here was an agreed upon eligibility list is
19 that right?
- 20 A Correct.
- 21 Q And I take it that you knew what names were on that list
22 is that correct?
- 23 A That's correct.
- 24 Q Now, when Ms. Kasmiroski arrived to vote you had
25 absolutely no reason to question her eligibility vote correct?

1 A No.

2 Q Okay. Did the Union ever request the board agent to allow
3 her to vote even if it was under challenge?

4 A No.

5 Q When you arrived at the polling area after you had been at
6 the Dunkin' Donuts and you walked in did you, did you ever walk
7 into the room, the conference room?

8 A I was never inside the conference room.

9 Q Okay. Did you yourself ever have any direct communication
10 with the board agent?

11 A I --

12 MR. WEINSTOCK: Are you talking about that day or?

13 MR. BIRCHFIELD: At that time.

14 JUDGE BIBLOWITZ: After the election?

15 BY MR. BIRCHFIELD:

16 Q At that time when you were arrived --

17 A During the, when we came back?

18 Q Yes.

19 A I did not.

20 Q Okay. So, you had no conversation with Mr. Rodriguez?

21 A At the end of the election?

22 Q Yes.

23 A I did not.

24 MR. BIRCHFIELD: Nothing further.

25 JUDGE BIBLOWITZ: Okay. Ms. Desa, any questions?

1 **CROSS EXAMINATION**

2 BY MS. DESA:

3 Q What kind of phone do you have?

4 A I have an iphone.

5 Q Is that what you had on the day of the election?

6 A Yes.

7 MS. DESA: I have no other questions.

8 JUDGE BIBLOWITZ: Okay. Anything else, Mr. Weinstock?

9 MR. WEINSTOCK: Nothing further.

10 MS. VUJANOVIC: Nothing for me.

11 MR. BIRCHFIELD: Excuse me.

12 **FURTHER CROSS EXAMINATION**

13 BY MR. BIRCHFIELD:

14 Q What cell phone carrier do you use?

15 A AT&T.

16 Q Do you know which carrier the board agent uses?

17 A No, I don't.

18 MR. BIRCHFIELD: I have nothing further.

19 JUDGE BIBLOWITZ: Okay. Thank you.

20 MS. DESA: I'm going to ask Mr., sorry, your name escapes
21 me, Employer's counsel if he'll stipulate that all cell phones
22 are calibrated to, I believe he has it in his position
23 statement.

24 THE WITNESS: Did you say I can go?

25 JUDGE BIBLOWITZ: You may be excused, Mr. Clarke. Thank

1 you for coming Mr. Clarke.

2 (Witness excused)

3 MS. DESA: I'm sorry, I'm looking for it.

4 MR. BIRCHFIELD: Actually I know what she's going for. We
5 stated in our position statement that clocks, that cell phones
6 are often set to time the clock. And at the time we submitted
7 our position statement we believed that to be true. But upon
8 further investigation we could find out that it's not, clocks
9 are not always accurate.

10 JUDGE BIBLOWITZ: Okay.

11 MR. BIRCHFIELD: And, and you can research the heck out of
12 this and the judge can take judicial notice but there are
13 certain issues with time lag between relationship to cell phone
14 towers and all sorts of things. But I do think most clocks are
15 set to the atomic clock, but there could be differences, so we
16 would never say that all clocks are the same.

17 JUDGE BIBLOWITZ: Okay, so we can --

18 MS. DESA: Well, Your Honor, I mean the position statement
19 submitted to the region and I quote, "as all cell phones in
20 America are synchronized to the atomic clock operated by the
21 U.S. Naval Observatory".

22 JUDGE BIBLOWITZ: Mr. Birchfield said that he's now
23 realized that was a mistake. It's not 100 percent certain,
24 correct?

25 MR. BIRCHFIELD: Yes. I absolutely wish that --

1 JUDGE BIBLOWITZ: Okay.

2 MR. BIRCHFIELD: -- was the case because we wouldn't put
3 evidence on to that effect, but upon investigation there are
4 slight discrepancies.

5 JUDGE BIBLOWITZ: Okay. Mr. Weinstock, your next witness
6 would be.

7 MR. WEINSTOCK: Yes, we sequestered, we'll get them. Do
8 you want me to go him ?

9 JUDGE BIBLOWITZ: Who will it be do you know?

10 MR. WEINSTOCK: Yes, Julio Palomo.

11 JUDGE BIBLOWITZ: Julio Palomo.

12 MR. WEINSTOCK: Palomo.

13 JUDGE BIBLOWITZ: P-A-L-O-M-O.

14 MR. WEINSTOCK: P-A-L-O-M-O.

15 JUDGE BIBLOWITZ: Oh, Palomo, okay, and Julio is the first
16 name, okay. Mr. Palomo, would you step up here, please, sir.
17 Raise your right hand.

18 Whereupon,

19 **JULIO PALOMO**

20 Having been first duly sworn, was called as a witness and
21 testified as follows:

22 JUDGE BIBLOWITZ: Please be seated right over there, watch
23 your step. Mr. Palomo, you will be questioned first by Mr.
24 Weinstock who as you know is the attorney for the company, the
25 attorney for the Union, sorry. Mr. Birchfield over there is the

1 attorney for the Employer, and Ms. Desa is the attorney for the
2 Labor Board.

3 Answer each question briefly and directly. Limit yourself
4 to yes or no if that's what the question calls for. Don't
5 explain anything unless anyone ask for an explanation. Keep
6 your voice up so everyone can hear what you have to say. It's a
7 big room with high ceilings.

8 The name is spelled P-A-L-O-M-B-O.

9 THE WITNESS: No, P-A-L-O-M-O.

10 JUDGE BIBLOWITZ: Oh, P-A-L-O-M-O, no B.

11 THE WITNESS: No, Palomo.

12 JUDGE BIBLOWITZ: Palomo, okay, and Julio is the first
13 name.

14 THE WITNESS: Correct.

15 JUDGE BIBLOWITZ: Good, okay, Mr. Weinstock.

16 **DIRECT EXAMINATION**

17 BY MR. WEINSTOCK:

18 Q State your full name, please.

19 A Julio Palomo.

20 Q And by whom are you employed?

21 A I'm employed by LIUNA, Laborers International Union North
22 America.

23 Q In what capacity?

24 A As an organizer.

25 Q Directing your attention to the date of April 30, 2013,

1 were you present at a pre-election conference?

2 A Yes, I was.

3 Q And tell us who else was present?

4 A Chuck Clarke was present, Tom Borum, Steve Svitilla, the
5 board agent, Dina with Almost Family, and three representatives
6 from Almost Family.

7 Q And Mr. Rodriguez held a conference?

8 A Excuse me?

9 Q Mr. Rodriguez the board agent addressed the group that was
10 present.

11 A Correct, yes.

12 Q Do you know about what time the conference took place?

13 A The conference took place between 8:00 and 8:15.

14 Q And do you recall what was said?

15 A Gave us quick rules, told us that his phone was the
16 official time piece and gave us the hours, the time frame of
17 the, the election.

18 Q Did you leave?

19 A After the preconference, yes.

20 Q And where did you go?

21 A We went to Dunkin' Donuts.

22 Q And were you with the other three gentlemen?

23 A Yes, I was.

24 Q And tell us after Dunkin' Donuts what time did you leave
25 there?

- 1 A We left Dunkin' Donuts by quarter after 9:00, around about
2 that time, I can't be approximate.
- 3 Q And did you have to drive to the election site?
- 4 A Yes, we did.
- 5 Q And did you arrive at the parking lot?
- 6 A Yes, the far end.
- 7 Q Do you recall the time as to when you got to the parking
8 lot?
- 9 A No, I don't. I know it was after 9:15.
- 10 Q And what happened next?
- 11 A Just waited in our cars.
- 12 Q And how long did you wait?
- 13 A Waited until about 9:27.
- 14 Q And then what did you do?
- 15 A Then we headed into the building.
- 16 Q How far away from the building?
- 17 A I'd say we parked 300 feet from the building.
- 18 Q And you walked into the building. Was the election site
19 on the main floor?
- 20 A No, it was not.
- 21 Q Where was it?
- 22 A It was in the basement.
- 23 Q And then what did you do?
- 24 A We located the steps and walked on the steps to the
25 basement.

- 1 Q Did you check the time?
- 2 A Yes.
- 3 Q And what time, what was your time piece?
- 4 A My time piece was when we were on the first floor headed
5 down the steps said 9:30.
- 6 Q And what time was it?
- 7 A 9:30.
- 8 Q You're headed down the steps.
- 9 A Heading --
- 10 Q What time piece are you --
- 11 A -- to the --
- 12 Q -- did you look at to know it was 9:30?
- 13 A My wristwatch.
- 14 Q And you went downstairs and what did you observe, what was
15 happening?
- 16 A It's nothing happening. I just went to the main, to the
17 main office door and looked down at my watch again.
- 18 Q What time was it then?
- 19 A It was 9:31.
- 20 Q And what happened next?
- 21 A I opened the door, had permission to come in by the
22 receptionist that was there. Then I walked in. I had a clear
23 view of the polling area. And I asked the watcher if it was
24 okay for us to come in. She asked the board agent. He said
25 yes, went into the room.

1 I asked the board agent again if it was okay, he looked
2 down at his time piece, said yes, it was after 9:30, it was okay
3 for us to be there.

4 Q Who were you with inside that room?

5 A Steve Svitilla.

6 Q And what happened next?

7 A Just waited and then the other parties came.

8 Q Other parties being?

9 A Almost Family.

10 Q Dina?

11 A Dina came and then the three representatives.

12 Q And where was the election booth at that time?

13 A The election booth when you walk into the room it was in
14 the far right corner.

15 Q Was it erect or?

16 A I can't recall whether it was erect or not.

17 Q Was there any notice on the outside of the door by the way
18 when you walked in, in the conference room?

19 A I don't recall that either.

20 Q Okay. And what happens next, can you see the ballot box?

21 A Yes.

22 Q Was it sealed?

23 A When we initially walked in, yes.

24 Q It was sealed. What happens next?

25 A Well, then he briefed us.

1 Q He being the board agent.

2 A Excuse me, yes. The board agent briefed us on how the
3 election went, and then proceeded to move on to opening the box.

4 Q How did he open the box?

5 A Took the tape off and the exact way he did it, I just know
6 that he was, that he opened the box.

7 Q Did you see Roberta at any point in time?

8 A No.

9 Q You didn't see her all that morning?

10 A No, I did not.

11 Q Did you hear anyone announced that another voter has
12 arrived?

13 A After the box was already open, I did.

14 Q Who announced that?

15 A Dina.

16 Q What did she say?

17 A She said that a voter arrived.

18 Q And what did the board agent say?

19 A The board agent said that the box was already open and he
20 asked both parties if we recognized that the box was open and
21 that nobody was able to vote.

22 Q You never saw Roberta at all, she never came into that
23 room?

24 A No.

25 MR. WEINSTOCK: I've no additional questions of the

1 witness.

2 JUDGE BIBLOWITZ: Mr. Birchfield.

3 **CROSS EXAMINATION**

4 BY MR. BIRCHFIELD:

5 Q Did you submit an affidavit to anybody as part of this
6 proceeding?

7 MR. WEINSTOCK: No affidavits from the Union or from the
8 Board.

9 MR. BIRCHFIELD: Okay.

10 BY MR. BIRCHFIELD:

11 Q Let me ask you a question, you said you parked outside
12 about 300 feet away from the front door when you returned to the
13 polling area outside of the building is that right?

14 A Yes, about 300 feet away from the building, the main
15 entrance of the main building.

16 Q And you walked into the building and you said you had to
17 go down some stairs to get to the level that Patient Care was on
18 is that correct?

19 A Yes.

20 Q Now, when you walked in do you recall what side of the
21 building you were on directionally speaking?

22 A Directionally speaking I would say the south side of the
23 building if I'm correct.

24 Q You didn't take an elevator downstairs did you?

25 A No.

1 Q So, when you walked in isn't it true that it's not like a
2 whole set of stairs but it's just like six or eight stairs down
3 to get to that level.

4 A Two flights. I'm not sure what you're asking me.

5 Q Well, when you walk in, because I was just there, and I
6 was just curious if you recall there being only about six to
7 eight steps to go from the parking lot level where you walk in
8 down to the level that Patient Care was on.

9 A I know there was a door and I think two flights coming
10 down like this, a little landing and then another one, I believe
11 that's the way it was.

12 Q And did everybody you were with take that same route back
13 to Patient Care?

14 A As far as I'm aware, yes.

15 Q Now, you didn't know who Roberta Kasmiroski was before the
16 election did you?

17 A No, I did not just by name.

18 Q And you had never seen her face prior to the election did
19 you?

20 A No.

21 Q And in fact you testified a minute ago you didn't even see
22 her on the day of the election correct?

23 A I did not see her before, no.

24 Q Now, you testified that when you walked into the, you were
25 actually in the conference room right?

1 A When?

2 Q At 9:30, at the polling, end of polling?

3 A No.

4 MS. DESA: Objection.

5 MR. BIRCHFIELD: Okay.

6 BY MR. BIRCHFIELD:

7 Q Were you at the inside of the conference room when the
8 board agent broke the box open?

9 A Yes.

10 Q And there were several other people with you correct?

11 A Correct.

12 Q And would it be fair to say that it was crowded, it was a
13 crowded conference room?

14 A Yes.

15 Q And some of the people actually were in the conference
16 room and then two of your colleagues were actually outside the
17 door isn't that correct?

18 A Yes.

19 Q Now, you said that you didn't recall, well, let me, let me
20 reask that. You testified that when you got in there that the
21 board agent briefed you about how the election went.

22 MS. DESA: Objection. I don't believe he briefed him
23 personally. I don't believe that that was the case.

24 BY MR. BIRCHFIELD:

25 Q Briefed the room.

1 A Yes.

2 Q Okay. And what exactly did the board agent say?

3 A Well, I don't know exactly what he said but he gave us a
4 total count of the voters, and then he did have us both
5 acknowledge that the polls were closed. And he showed us his
6 time piece so we could visually see that his time piece said
7 after 9:30. And he looked at us, we said yes, we agree the
8 polls are closed. He looked at the other party and they said
9 the same.

10 Q So, he said that to you after you were already in the
11 conference room.

12 A He said that to us, yes.

13 Q Yes, okay. Now, then he took the ballot box and I believe
14 there's been testimony today, but I'm interested in what you
15 have to say about this. He broke the tape, is that a fair
16 statement?

17 A He opened it. The manner in which he did it, I don't
18 recall. I just know it was open.

19 Q Right. And at some point in time somebody said there's
20 another voter here is that right?

21 A After the box was already open.

22 Q But the box, when you say the box was already open, there
23 were no ballots strewn about the table at that time were there?

24 A I could see through the box.

25 Q Pardon me?

1 A I could see through the box, he had opened it already.

2 Q You could see inside that there were ballots in the box,
3 but the ballots were not out of the box.

4 A Yes, there were ballots already out of the box.

5 Q Okay. So, your testimony today is that there were ballots
6 already out of the box.

7 A Yes.

8 Q When somebody said that we have another voter here?

9 A Yes, he had already started taking them out of the box.

10 Q Had he counted any ballots at that time?

11 A No. I don't recall that, no.

12 Q And at that point in time what did the board agent say in
13 response to a comment that we have another voter present?

14 A He mentioned that the box was already open, that couldn't
15 have any more voters. And then again he asked both parties that
16 we recognize that because the box was open he cannot allow
17 anybody else to vote and we said correct, and the other party
18 said the same.

19 Q And who was the other party?

20 A The Almost Family, the three representatives that were
21 there. I'm sure what their affiliation was.

22 Q So your testimony is that he actually asked them to concur
23 with his decision that no further ballots can be cast?

24 A He asked us to recognize that the box was open therefore
25 there would be no way for anybody else to vote.

1 Q Okay.

2 A And that the polls had already been closed.

3 Q Now, at that point in time you, were you aware that there
4 was an agreed upon eligibility list agreed to by the Union and
5 the Employer?

6 A Yes.

7 Q So, there were a certain number of people. Did, did you
8 at any point in time entertain the notion that somebody should
9 be allowed to vote who was on that eligibility list?

10 JUDGE BIBLOWITZ: Could you rephrase the question? I'm not
11 sure what you're saying.

12 MR. BIRCHFIELD: Yes.

13 BY MR. BIRCHFIELD:

14 Q Did you at any time consider that somebody had the right
15 to vote since their name was on that eligibility list?

16 MR. WEINSTOCK: I'm going to object.

17 JUDGE BIBLOWITZ: Yes, I'm not sure what his feelings
18 would have to do with this, sustained.

19 BY MR. BIRCHFIELD:

20 Q You never asked the board agent to count, or to allow this
21 person to vote did you?

22 JUDGE BIBLOWITZ: Did you ask the board agent after the,
23 after Dina came to, not Dina, after the voter came to allow her
24 to vote?

25 THE WITNESS: No.

1 BY MR. BIRCHFIELD:

2 Q Now, was there any document that the parties had to sign
3 indicating that the polls were closed and the ballot box was
4 already open?

5 A No.

6 Q Were you aware of the name of the employee who was not
7 able to vote at that time when the, these events happened?

8 A No, I was not.

9 MR. BIRCHFIELD: I have nothing further.

10 JUDGE BIBLOWITZ: Ms. Desa, any questions?

11 **CROSS EXAMINATION**

12 BY MS. DESA:

13 Q Mr. Palomo, going back to the pre-election conference do
14 you recall if you did anything when Mr. Rodriguez designated his
15 cell phone as the official time piece?

16 A Yes, I made sure my watch was within reason of his.

17 Q And after the polls were closed you testified that Mr.
18 Rodriguez spoke to the parties. How long did his speech take?

19 A Uh --

20 MR. BIRCHFIELD: Objection.

21 JUDGE BIBLOWITZ: Overruled. How long did it take for him
22 to talk to the parties?

23 THE WITNESS: It wasn't very long. To give you an actual
24 time I'm not sure. I just know it wasn't very long.

25 BY MS. DESA:

1 Q Do you know what he said?

2 A Just gave us the count of the voters and explained to us
3 the next step what he was going to do.

4 MS. DESA: I have nothing further.

5 JUDGE BIBLOWITZ: Mr. Weinstock, anything else?

6 MR. WEINSTOCK: Nothing further.

7 JUDGE BIBLOWITZ: Okay.

8 MR. BIRCHFIELD: I just have a couple of follow-ups.

9 **FURTHER CROSS EXAMINATION**

10 BY MR. BIRCHFIELD:

11 Q So, when he told you, you've said this twice now, but he
12 gave you the count of the voters. He told you how many voters
13 had voted.

14 A He had told us how many eligible voters voted.

15 Q So, do you recall what that number was?

16 A Seven.

17 Q Okay. So, he told you at that time that seven eligible
18 voters had voted and then he proceeded to open the box?

19 A I don't know the order of that.

20 Q So, he could have opened the box and then told you --

21 A No, he definitely did not do that.

22 Q Okay. So, then it's fair to say that he told you that
23 seven eligible voters had voted, then he proceeded to open the
24 box.

25 A Well, not in that order. I do know that he told me prior

1 to, told us prior to opening the box how many eligible voters
2 came in. What he said after that I'm really don't recall.

3 Q And did he tell you that when you first entered the
4 conference room?

5 A No, he didn't say anything to us, anything to me other
6 than the fact that the polls were closed and that I was able to
7 be in there.

8 Q Okay. And when he told you that there were seven eligible
9 voters were there company representatives already in the room as
10 well?

11 A Yes, the room had already been crowded.

12 Q And I just to make sure, I believe Mr. Clarke testified
13 that Ms. Paolicelli, Dina, that she arrived at the polling area
14 right on, kind of right after you guys did when you walked in
15 the room.

16 A Yes, I would say she, they came, she came shortly after.

17 Q So, she was fair to say right on your heels as you walked
18 into that room?

19 A Somewhat, I mean she wasn't right behind me.

20 Q When did, how long did it take Mr. Kraus and the other
21 company representatives to walk into the room after you got
22 there?

23 A I'm not sure. I walked into the room shortly after they
24 came in. To tell you the exact time I'm not sure. I just know
25 it was shortly after we had walked in.

1 MR. BIRCHFIELD: Nothing further.

2 JUDGE BIBLOWITZ: Okay, thank you. Thanks, Mr. Palomo.

3 THE WITNESS: Thank you.

4 JUDGE BIBLOWITZ: Thank you for coming.

5 **(Witness excused)**

6 JUDGE BIBLOWITZ: Who's the next witness, Mr. Weinstock,
7 any further witnesses?

8 MR. WEINSTOCK: Can I have a five minute. We have two
9 possible witnesses but based on the testimony we may not call
10 any additional witnesses.

11 JUDGE BIBLOWITZ: Okay.

12 MR. WEINSTOCK: Also my understanding is that Mr.
13 Rodriguez will be called as a witness. So, let me discuss it
14 with my client.

15 JUDGE BIBLOWITZ: Okay, five minutes, resume at 12:10.

16 **(Whereupon, a brief recess was taken)**

17 JUDGE BIBLOWITZ: We're back on the record.

18 MR. WEINSTOCK: We have an additional witness.

19 MS. VUJANOVIC: Could we wait for my co-counsel?

20 JUDGE BIBLOWITZ: Do you have any additional witnesses?

21 MR. WEINSTOCK: Yes, we have an additional witness, yes.

22 JUDGE BIBLOWITZ: Okay, do you want to call him and I'll
23 swear him in. And that witness is?

24 MR. WEINSTOCK: Thomas Borum.

25 JUDGE BIBLOWITZ: Raise your right hand.

1 Whereupon,

2

THOMAS BORUM

3 Having been first duly sworn, was called as a witness and
4 testified as follows:

5 JUDGE BIBLOWITZ: Please be seated, watch your step. Let
6 me get your first name is?

7 THE WITNESS: Thomas.

8 JUDGE BIBLOWITZ: Okay, and the last name?

9 THE WITNESS: Borum, B-O-R-U-M.

10 JUDGE BIBLOWITZ: Mr. Borum, you're going to be questioned
11 first by Mr. Weinstock who is the attorney for the Union as you
12 know. Mr. Birchfield will be back in a moment, he's the
13 attorney for the Employer, and Ms. Desa, the attorney for the
14 labor board. We'll start in a moment but and when you're
15 testifying answer each question briefly and directly, yes or no
16 if that's what the question calls for. Don't explain anything
17 unless one of the lawyers asks for an explanation. And seems I
18 don't think we're going to have a problem with this but keep
19 your voice up. I can tell from your voice that it's --

20 THE WITNESS: Usually loud, carries --

21 JUDGE BIBLOWITZ: Yes, we need that in this room. So,
22 okay, Mr. Weinstock.

23

DIRECT EXAMINATION

24 BY MR. WEINSTOCK:

25 Q State your full name, please.

- 1 A It's Thomas Borum.
- 2 Q And by whom are you employed?
- 3 A Laborers International Union of North America.
- 4 Q And the local?
- 5 A Local 1310.
- 6 Q And what is your position?
- 7 A I'm the business manager.
- 8 Q Directing your attention to the date of April 30, 2013,
- 9 and the time frame being after 9:00 that morning, where were you
- 10 at around 9:00 that morning?
- 11 A At 9:00 that morning we were in the parking lot of the
- 12 building.
- 13 Q About what time?
- 14 A From approximately 9:00 until 9:35.
- 15 Q And where was the car parked?
- 16 A In the far corner of the parking lot by, it's, it's like
- 17 in a, almost to the housing project.
- 18 Q And were you waiting there for some reason?
- 19 A We were, the time to go back in for the election wasn't
- 20 over until 9:30.
- 21 Q And did you enter the building?
- 22 A We did enter the building.
- 23 Q And approximately tell us the time frame when you believe
- 24 you entered the building?
- 25 A Entered the building, 9:30.

1 Q And what did you do?

2 A The room where the election was held was downstairs. We
3 went down the stairs just because I know you're not allowed to
4 enter the room before. I looked at my cell phone. We walked in
5 the offices at 9:31.

6 Q And who were you with?

7 A I was with Chuck Clarke, my organizer, and actually two
8 other of my organizers, Julio Palomo and Steve Svitilla.

9 Q Do you recognize the diagram in front of you, I believe
10 Employer One, is it up there?

11 A Yes.

12 Q And where were you reference to the item number two that
13 appears on the document?

14 A This is inside their office.

15 Q Right.

16 A I was in the doorway.

17 Q Where the two is?

18 A Yes.

19 Q I'm sure yours is exactly the same as mine because I
20 marked mine, but near the door?

21 A I was right in the doorway actually standing, yes.

22 Q Who were you with at that time?

23 A Outside the room?

24 Q Outside the doorway.

25 A I was with Chuck.

- 1 Q And who was inside?
- 2 A Steve Svitvilla and Julio Palomo.
- 3 Q Did you observe what was going on in the room?
- 4 A I did.
- 5 Q What did you observe?
- 6 A When we walked in the guy, I'm sorry, I forget his name,
7 opened the curtain, took the box. Well, first we actually
8 waited for everyone to get there. Then after the other
9 attorneys came and the people from Almost Care, he opened the
10 curtain, took the box, gave a, actually gave a speech on kind of
11 what was going to happen, how the election, you know, rules
12 were, what the votes were. And then he proceeded, he started to
13 open the box and somebody actually walked in.
- 14 Q He being the board agent, Mr. Rodriguez?
- 15 A Sorry, yes.
- 16 Q Sitting at the table?
- 17 A Yes.
- 18 Q He took the box out from the election.
- 19 A Behind, there was the curtain, that little curtain they
20 have so they took it out and sat it on like a conference table
21 that was in the room.
- 22 Q Did you see him open the box?
- 23 A He started to pull the tape off the box, yes.
- 24 Q And did he open the box?
- 25 A The box did open.

1 Q And at any point in time did you notice anyone come into
2 the polling area?

3 A Yeah, about 15 minutes later from 9, like, about, on my
4 watch because I checked, it was about like quarter of 10. I
5 was, another person came in to vote.

6 Q Do you know who that was?

7 A I forget her name offhand, I'm sorry.

8 Q She was a possible voter?

9 A Yes, that's how she was identified.

10 Q And did you hear her say anything?

11 A She walked into vote. At the time of the watcher for the
12 Almost Family said that, identified her as a potential voter.
13 She, the agent said that he had already started the process, he
14 was sorry, you know, she couldn't vote. She said well I thought
15 I had until 10:00 to vote. He said the vote was done at 9:30,
16 and he already started the process, so he didn't let her vote.

17 Q But you heard her say she thought she had until 10:00?

18 A Until 10:00.

19 Q And you didn't, it was about 9:45 at that time?

20 A Yeah, it was, I mean I don't have a digital watch so I
21 don't know. It was between, you know, between 9:40 and 9:45.

22 MR. WEINSTOCK: I've no additional questions at this time.

23 JUDGE BIBLOWITZ: Mr. Birchfield.

24 MR. WEINSTOCK: I'm sorry, one.

25 BY MR. WEINSTOCK:

1 Q Did you block anyone's way into the election area?

2 A I did not, no.

3 MR. WEINSTOCK: Okay.

4 JUDGE BIBLOWITZ: Mr. Birchfield.

5 MR. BIRCHFIELD: I have nothing.

6 JUDGE BIBLOWITZ: Ms. Desa.

7 **CROSS EXAMINATION**

8 BY MS. DESA:

9 Q Did you at the pre-election conference did you have a cell
10 phone?

11 A At the pre-election?

12 Q I'm sorry, no. I'm sorry. You didn't testify to the pre-
13 election conference. I withdraw that. Did you have a cell
14 phone with you on the day of the election?

15 A I did.

16 Q What kind of phone?

17 A I have an iphone, an Apple.

18 Q And how long did Mr. Rodriguez' speech take before he
19 started to open the box?

20 A To say I timed it, I mean it had to be five to seven
21 minutes.

22 MS. DESA: I have nothing further.

23 JUDGE BIBLOWITZ: Okay, thank you. Thanks, Mr. Borum,
24 thanks for coming. You're excused.

25 **(Witness excused)**

1 JUDGE BIBLOWITZ: Mr. Weinstock, anything?

2 MR. WEINSTOCK: The Petitioner would rest its case.

3 JUDGE BIBLOWITZ: Okay. Ms. Desa, what are going to do at
4 this time?

5 MS. DESA: Yes, I'd like to call David Rodriguez.

6 JUDGE BIBLOWITZ: Please raise your right hand.

7 Whereupon,

8 **DAVID RODRIGUEZ**

9 Having been first duly sworn, was called as a witness and
10 testified as follows:

11 JUDGE BIBLOWITZ: Please be seated. That's David
12 Rodriguez just as I'd assume it to be spelled, right,
13 R-O-D-R-I-G-U-E-Z?

14 THE WITNESS: Yes

15 JUDGE BIBLOWITZ: Okay. Ms. Desa, please.

16 **DIRECT EXAMINATION**

17 BY MS. DESA:

18 Q Mr. Rodriguez, where do you work?

19 A I work at the National Labor Relations Board, Region 4.

20 Q Have you worked in any other region?

21 A No, I have not.

22 Q How long have you worked for the board?

23 A I've worked for the board for almost three years.

24 Q And what are some of your job duties?

25 A Well, I'm an attorney for the region, so I process

1 representation petitions filed by Unions, Employers and
2 individuals. I investigate unfair labor practice charges. I
3 conduct pre-election hearings and post-election hearings and I
4 litigate cases.

5 Q And do you conduct elections as part of your job duties?

6 A Yes, I do.

7 Q Is there a procedure that you follow when you arrive at a
8 facility to conduct an election?

9 A Yes.

10 Q Please tell us what you do.

11 JUDGE BIBLOWITZ: Ms. Desa, let's cut through the chase.
12 What did he do, not what you would you, what you do generally.

13 MS. DESA: Okay.

14 BY MS. DESA:

15 Q Approximately how many elections have you conducted since
16 you started working for the Board?

17 A More than 20, less than 40.

18 Q And at any point did you ever say that you would close the
19 polls early if everyone have voted?

20 A No. In fact I said what I say at every election that I
21 conduct, I said the polls are open from the X to Y, in this case
22 it was 8:30 to 9:30. I tell the observer, you know, you have to
23 be here throughout the entire voting period. If you need to go
24 and get some water or some coffee or something to read, please
25 do that at this time because you won't be able to leave during

1 the polling hours.

2 And that's, I said that around the time that I had
3 designated my iphone as the official time piece.

4 Q Okay. You jumped a little bit ahead of me but so you
5 conducted the election at Patient Care on April 30th?

6 A Yes, I did.

7 Q And what time were the polls scheduled to be open?

8 A The polls were scheduled to be open 8:30 a.m. to 9:30 a.m.

9 Q And was the polling area the conference room at the
10 Employer's facility in Allentown?

11 A Yes, it was.

12 Q And what time did you arrive at the Employer's facility on
13 this day?

14 A I was about an hour and a half early. I parked in a
15 neighborhood that was outside the facility and waited.

16 Q And did the parties have observers?

17 A Only the Employer had an observer. The Union did not have
18 an observer.

19 Q And please tell us what you did when you arrived at the
20 Employer's facility?

21 A When I arrived at the Employer's facility there was an
22 Employer consultant, that's how he was, introduced himself
23 waiting for me outside the E Office building. And he escorted
24 me to the Employer's office. And when I arrived I entered the
25 office and went to the conference room and I inspected the

1 polling area to make sure that there was no campaign material,
2 that the notice wasn't defaced.

3 And I also in the, there were two windows. It was in a
4 basement so the windows were high up. and I could see outside so
5 I asked about those. I asked if anybody could see inside. The
6 Employer rep, somebody from the Employer said that no, you
7 couldn't see outside. The Union agreed that you couldn't but we
8 decided to go inspect it. So, we went outside around the
9 outside part of the office and looked, and then you couldn't see
10 inside the conference room. So, and then we went back inside.
11 And I conducted by pre-election conference.

12 Q And please tell us who was present for your pre-election
13 conference?

14 A Well, the observer for the Employer was there as well as
15 the supervisor for the Employer. I believe her name is Dina
16 Paolicelli. There were the consultant that met me outside was
17 also there along with maybe one or two other people for the
18 Employer. And then the Union representatives were there as
19 well.

20 Q And please tell us what occurred during the pre-election
21 conference?

22 A Well, during the pre-election conference I explain what
23 will be happening at the election. And I explain all the rules
24 and procedures. One of the main things about the pre-election
25 conference is to instruct the observer on their role and what

1 they should and should not do.

2 So, I started by saying the polls were going to be open
3 from 8:30 to 9:30. I said that this was a sonotone election so
4 there would be two sets of ballots. One of them would be given
5 out to the professional employees. The other one would be given
6 out to the non-professional employees. I explained that I
7 designated the conference room as no electioning room zone. And
8 said that the observer was not allowed to talk to any of the
9 voters coming in about the election.

10 In fact I told her you can say hi, to them, that's fine
11 but anything beyond that you shouldn't say. I explained the
12 voting procedures, when I explained that when the voter comes in
13 I'll ask them to state their name, and then the observer will
14 put a checkmark next to their name on the Excelsior sheet.

15 I also showed the Excelsior sheets to both parties and ask
16 them to initial at the bottom of each page, of the page of the
17 Excelsior sheet to make, just to make sure that that was the
18 Excelsior sheet that, you know, they had sent us, and that they
19 had received. And so, towards the end of the election I said
20 that, you know, I announced the time on my iphone I designated
21 my iphone as the official time piece.

22 And then shortly thereafter, I'm not sure if it was before
23 the time piece or after I showed the parties the box so that
24 they could see that the box was empty. I sealed the box in
25 their presence and I'll also set up the election booth. And

1 then after that once we were getting close to the opening time,
2 about five minutes before or so, I asked the parties to leave.

3 Q I think you testified, you made reference to the actual
4 election time. Did all of this occur prior to the opening of
5 the polls?

6 A Yes, this is all during the pre-election conference.

7 Q And what did you, tell us again what did you designate as
8 the official time piece?

9 A My cell phone, I have an iphone I designated that as my
10 official time piece. This is the only digital clock that I had.

11 Q And I draw your attention to the last 15 minutes of the
12 polling time, please tell us what happened.

13 A Well, as we were getting close to the end of the polling
14 period I started to, to, I had been talking to the observer
15 throughout the voting session. The voting session was an hour
16 long and there were seven voters, so there was a lot of down
17 time during the election. As we were getting towards the end of
18 the voting period I started telling her how much, you know,
19 every now and then, you know, we only have 20 minutes left. We
20 only have 15 minutes left, it was something like that.

21 I also said, you know, getting up to within a few minutes
22 before the end of the session I said, you know, normally at this
23 time I try to take down the booth so that I can leave right
24 after the tally. But there's one person that hasn't voted yet
25 so I'm going to leave it up for now just in case they come at the

1 last minute.

2 Q Mr. Rodriguez, during the pre-election conference did you
3 at any time say that you would close the polls early if everyone
4 had voted?

5 A Absolutely not, in fact I said the opposite, we're going
6 to be here until 9:30, then if everybody votes.

7 Q And had everyone voted at that point?

8 A No, there was one person that had not voted.

9 Q And then what happened?

10 A Well, I was sitting on a table next to the observer. And
11 I was basically just lighting up the screen on my iphone
12 periodically because I like to close the polls exactly at 9:30.
13 I mean that's what we were instructed to do. So, you know, when
14 it was 9:28, I started checking it every couple of seconds so
15 that I can make sure that I got the time right. And when I saw
16 it turn 9:30, I went to the, to the front door which was open to
17 the conference room, and I said, "9:30, polls are closed".

18 Q And prior to closing the polls did you see any party
19 representatives trying to enter the polling area?

20 A No, I didn't.

21 Q Did you permit any representatives to open, to enter the
22 polling area prior to closing the polls?

23 A Well, no one attempted but if they would have I --

24 JUDGE BIBLOWITZ: Don't tell us what it would. No one
25 attempted to.

1 THE WITNESS: Nobody attempted to come in.

2 BY MS. DESA:

3 Q Did anyone say it really wasn't 9:30 and that the polls
4 were closed in error?

5 A No.

6 Q Did the observer protest as you closed the polls?

7 A No.

8 Q Did the observer tell you there was a voter present to
9 vote?

10 A Later on --

11 MR. WEINSTOCK: I object.

12 JUDGE BIBLOWITZ: At what point, do you want to ask

13 BY MS. DESA:

14 Q As you closed the polls?

15 A No.

16 Q Did anyone protest your open reliance on your iphone
17 throughout the election?

18 A No.

19 Q Did anyone protest your reliance on your phone at the
20 closing of the polls?

21 A No.

22 Q When you announced the closing of the polls did you see a
23 voter coming?

24 A No.

25 Q And where were you standing when you closed the polls?

1 A I went to the door and stuck my head out and announced
2 that the, the time that the polls were closed. And then I went
3 back inside, got the box, went around to the back of the table,
4 stood behind the box while everybody came in.

5 Q Please tell us what you did after you announced the
6 closing of the polls?

7 A Well, as I said I took the box, I went out around the back
8 and waited for the parties to come in. The Union came in right
9 away. I believe Ms. Paolicelli came in and I said let's wait
10 until the rest of the Employer representatives come in. So, we
11 waited and shortly thereafter they walked in. And then I began
12 my pre-count.

13 I instructed them on the counting procedure. I said this
14 is a sonotone election. There are two sets of ballots. One
15 ballot, one set of ballots is for the professional employees.
16 One set of the ballots is for the non-professional employees.
17 The professional ballot has two questions on it.

18 The first question on it is, asks them to say whether they
19 would like to be included in a unit with the non-professional
20 employees. The second question asks them if they would like to
21 be represented by the labor organization. I said that I would
22 count the professional ballots on the, solely on the question of
23 whether they would like to be included in the unit first.

24 And then if they voted for inclusion then I would count
25 all the ballots together and issue one tally of ballots. But

1 that if they did not vote for inclusion I would have to count
2 the ballots separately to know whether or not they wanted to be
3 represented by the Union.

4 I said that I would count the, I would take the ballot,
5 seeing what the ballot says, show it to the parties, but it back
6 down on the table. That if everybody made any unorthodox marks
7 on the ballot, then I would count the ballot if I could tell
8 what the intent of the voter was. But that if the ballot was
9 clean or if it had an unorthodox marking that I couldn't tell
10 what the voter wanted to do, then I would count that ballot as
11 void.

12 I also said that anybody that signed their ballots, their
13 ballots would be counted as void. I told the parties that right
14 before I opened the box that if any ballots fall on the ground
15 do not touch them. I told them to be, to, that I asked them to
16 remain quiet throughout the count, no cheering, no commentary,
17 nothing like that until I had concluded any issue of the tally
18 of ballots.

19 I then put the ballot box on a, on a side. I said there
20 was no challenged ballots that we needed to go over. And then I
21 punched a hole, or punched my fist through the side of the box.

22 Q And who was present as you went through these procedures?

23 A The same people that were present during the pre-election
24 conference. It was Ms. Paolicelli, the observer. There were, I
25 think there were more Union representatives at, in the, for the

1 count than for the pre-election conference but I'm not sure.
2 There might have been like, I remember two to three. And there,
3 and then there was the consultant that met me before the
4 election and then a couple of other guys.

5 Q And please tell us what happened once you started to open
6 the ballot box?

7 A Well, I punched the ballot box and then I bent the flaps
8 open and then I put my hands in the ballot box to start taking
9 the ballots out. And when my hands were inside the ballot box I
10 heard somebody say, "Oh, the last voter is here". And I said,
11 "I'm sorry, the box is open, she's not going to be able to
12 vote".

13 Q What time was this when you heard the announcement that
14 the last voter had arrived?

15 A I don't know what time it was exactly. It was after I had
16 given the counting speech and after I had, you know, after we
17 had waited for everybody to come in, but I don't know exactly
18 what time it was.

19 JUDGE BIBLOWITZ: So, you didn't look at your watch when
20 you heard --

21 THE WITNESS: No, I didn't.

22 JUDGE BIBLOWITZ: -- someone yell there's another voter?

23 THE WITNESS: No, I did not.

24 JUDGE BIBLOWITZ: Not watch, your iphone.

25 THE WITNESS: No, I did not look at my watch. I, I was, I

1 had my hands in and I actually saw from the corner of my eye the
2 door open and the person say that. And I just said, "I'm sorry,
3 the box is already open, she's not going to be able to vote".

4 JUDGE BIBLOWITZ: Okay.

5 BY MS. DESA:

6 Q And did the voter protest to you that she had arrived
7 prior to the closing time?

8 A No.

9 Q Did the voter demand to vote?

10 A No. In fact I didn't see the voter, I just saw the door
11 open.

12 Q Did the voter enter the polling place?

13 A No.

14 Q Did any party contend that the voter should be allowed to
15 vote?

16 A No.

17 Q Did anyone ask that she be allowed to cast a challenged
18 ballot?

19 A No.

20 Q Did anyone protest when you did not permit the voter to
21 vote?

22 A No.

23 Q And please continue to tell us what happened?

24 A Well, then, then you know I took the ballots out and I, I
25 took the professional ballots. They are a different color so

1 they're easy to separate and I started counting the, the
2 question on whether they wanted to be included in the, with the
3 non-professionals in the same unit. And then after that they
4 voted to be included in the unit. So, I counted all the ballots
5 together and issued a tally of ballots, and the parties signed
6 it and, you know, they started leaving and I started gathering
7 my things and getting ready to go.

8 Q And where did you go after the election?

9 A Back to work.

10 MS. DESA: I have nothing further, Your Honor.

11 JUDGE BIBLOWITZ: Mr. Birchfield.

12 MR. BIRCHFIELD: Yes, I have a few questions.

13 **CROSS EXAMINATION**

14

15 BY MR. BIRCHFIELD:

16 Q Now, you as a board agent conducting these elections it's
17 your job to protect the integrity and fairness of the election
18 process is that right?

19 A Yes.

20 Q And you testified earlier that you did not say anything
21 about closing the polls early under any circumstances?

22 A That's correct.

23 Q Okay. Now, were you familiar with the fact that this
24 election you were conducting was, you know, there was an agreed
25 upon eligibility list called the "Norris Thermador List"?

1 A Yes. I believe I was told that before I went to the
2 election.

3 Q So, that means that the names on the list they get to
4 vote. There's nobody can contest the eligibility of cell phone
5 correct?

6 A That's right.

7 Q So, isn't it common, and I, because I used to work at the
8 board and conducted about 50 of my own elections. Isn't it
9 common that if you have a Norris-Thermador List, particularly
10 with less than 10 voters, if they all show up and vote you can
11 open, you can close the polls early?

12 A No, that's not true. In fact, the, when I was first, when
13 I first started working for the region and observed elections,
14 was told by everybody that I ran them with always keep the polls
15 open during that voting, during the period, that there's no
16 exceptions.

17 Q Okay. And were they talking in terms of, because I agree
18 with you in terms of just a regular eligibility list, but was
19 that in terms of a Norris-Thermador List?

20 A Nobody ever told me that there was an exception to the
21 rule for Norris-Thermador.

22 Q So, your testimony is you never said that, and people who
23 have testified that you did are mistaken or, or lying?

24 A That's correct.

25 Q You testified that you conducted a pre-election conference

1 and you explained in some detail the procedures you went through
2 to let people know how this election was going to be conducted.

3 A That's right.

4 Q And you testified that when you were done doing that,
5 there was approximately five minutes before the polls were set
6 to open?

7 A I think it was close to the time that the polls were going
8 to open.

9 Q But I believe your testimony was five --

10 A It was probably about five minutes, but I don't remember
11 what time I announced. I don't know if I announced that it was
12 8:25. It was within five, it was I think it was close to, to
13 five minutes before the, the polls opened, I think so.

14 Q But you also testified that you asked everybody to leave.

15 A Yes, I did ask everybody to leave.

16 Q And you wanted them to leave and be not present in the
17 polling area right when the polls open correct?

18 A Yes.

19 Q But you did not take any similar steps on the back end of
20 the election to make sure there were people not present near the
21 polling area when the polls closed right?

22 MS. DESA: Objection.

23 JUDGE BIBLOWITZ: I'm not sure I understand the question.
24 He testified that when he closed the polls he looked out the
25 door. So, I'm not sure what your --

1 MR. BIRCHFIELD: Well, my point is that before the polls
2 opened he made sure that people were out

3 JUDGE BIBLOWITZ: Right.

4 MR. BIRCHFIELD: Of the polling area and exited from the
5 building, but when the polls closed --

6 BY MR. BIRCHFIELD:

7 Q I mean who did you announce the polls were closed to?

8 A To the room. I always just stick my head out the polling
9 room and just announced it. I don't say it to anybody in
10 particular.

11 Q So, you don't --

12 A I didn't say it t --

13 Q -- know if anybody was there that --

14 A I know that during the, during the polling hour there was
15 some employees, some voters that were doing paperwork or coming
16 in and doing things so I know that they were in the room. I
17 don't know if they were still in the room when I announced that
18 the polls are open. But I don't remember seeing anybody.

19 Q Okay. And but it's fair to say that as soon as you made
20 that pronouncement that the polls were closed that immediately
21 thereafter the Union representatives were at the door correct?

22 A They --

23 MS. DESA: Objection. There was no --

24 JUDGE BIBLOWITZ: When you say me, the rep, I'm not sure
25 what you mean by immediately thereafter.

1 BY MR. BIRCHFIELD:

2 Q Well, when you opened the door and said "the poll is
3 closed", the Union representatives were there within seconds.

4 A Well, the door was --

5 MS. DESA: Objection.

6 JUDGE BIBLOWITZ: Overruled.

7 MS. DESA: Hold on.

8 JUDGE BIBLOWITZ: Well, he can ask the question.

9 MS. DESA: Nobody is making a statement --

10 JUDGE BIBLOWITZ: You can ask --

11 MS. DESA: -- or he --

12 JUDGE BIBLOWITZ: I overruled the objection. He can ask
13 the question, Ms. Desa.

14 THE WITNESS: Well, the poll was, the door was not closed.
15 The door was open throughout the time of the, the, during the
16 polling hour. When I announced that the polls were closed I
17 went to the table where the box was. I took it around to the
18 back of the table. And then when I was already in the back of
19 the table is when the Union came in.

20 Now, that probably took a few seconds. I mean maybe 10
21 seconds, or I don't know how long it would take me to walk
22 around. But it wasn't, it wasn't immediate if immediate means
23 one or two seconds. It was more than one or two seconds. It
24 was a time that took me to go around the back of the table.

25 BY MR. BIRCHFIELD:

1 Q And I believe there's been testimony that it was about an
2 eight foot long table so we're in a pretty small crowded
3 conference room would you agree?

4 A Well, it wasn't, there was two people there when I closed
5 the polls so it wasn't crowded. But the table takes up most of
6 the space in the conference room, especially towards the wall
7 that's facing the office, because on the other side of the wall
8 they have like a, you know, like a frig, and that stuff so the
9 table is closer to that. But the table does take up most of the
10 space.

11 Q Now, you've been sitting here all throughout this hearing
12 today correct?

13 A Yes, I have.

14 Q So, you were not sequestered or denied the opportunity to
15 see the other people testify.

16 A I was not.

17 Q Okay. And I believe there's been several people testified
18 that it was the Union representatives who first arrived after
19 you say you closed the poll.

20 A Yes.

21 Q So, you would concur with that?

22 A Yeah, the Union, the Union was the first one to come in.
23 Then right after they came in the, Ms. Paolicelli came in. And
24 then I said, you know, let's, we have to wait until the Employer
25 reps come in and so we waited for them to come in.

1 Q Right. Now, were you aware you're in the process of doing
2 the vote count, were you aware that you had the prerogative to
3 allow this voter to vote under challenge?

4 A I was not.

5 Q Okay. So, you had not read the Board's case handling
6 manual for Board agents prior to that election?

7 A I had read sections of the board, of the case handling
8 manual. I have not read every single word in that manual and I
9 was not familiar with the provision that you're talking about.

10 MR. BIRCHFIELD: I have nothing further.

11 JUDGE BIBLOWITZ: Mr. Weinstock, anything?

12 MR. WEINSTOCK: I have some.

13 **CROSS EXAMINATION**

14 BY MR. WEINSTOCK:

15 Q When you went outside the room announced the polls were
16 now closed --

17 MR. BIRCHFIELD: Objection.

18 JUDGE BIBLOWITZ: Yes, he didn't go outside the room.

19 BY MR. BIRCHFIELD:

20 Q Well, when you announced the polls are now closed where
21 were you physically?

22 A I was standing in the conference room and I stuck my head
23 out.

24 Q So, where number two appears on the diagram that's where
25 you were when you stuck your head out?

1 A Yes, I was right in the doorway. I was within the
2 threshold of the conference room.

3 Q What did you see?

4 A I said, "9:30, polls are closed".

5 Q And what could you see?

6 A I could see the area. There was a couple of desks. There
7 were some, there was like cubicles, just office stuff. There
8 was a, like a filing cabinet thing and.

9 Q You didn't see any individuals from the Union when you
10 announced the polls were closed?

11 A No.

12 MR. BIRCHFIELD: Objection.

13 JUDGE BIBLOWITZ: Overruled.

14 BY MR. WEINSTOCK:

15 Q And after you announced the polls were closed did you do
16 anything with the election booth?

17 A No, I, I took down the booth after I finished, after I
18 gave out the tally of ballots.

19 Q That was the last thing you did.

20 A It was one of the last things I did.

21 Q But you did get the ballot box and put it on the table.
22 And then at that point some people had arrived.

23 A Nobody had arrived when I put it on the table. They
24 arrived like right when I, put the box on the table and I looked
25 up and then the Union was coming in.

1 Q And the method of opening the box we heard it described to
2 take your fist and break the tape.

3 A Well, that's how I do it. I, I, I lay the box on the side
4 where the seam is, where the tape is and I punched through the
5 box.

6 Q And can you see the ballots?

7 A When you punch through it, you know, you have to lift up
8 the flaps and you see the ballots.

9 Q At what point in time did you hear any commotion about an
10 eligible voter?

11 A When I was I had punched through it. I was opening the
12 flap and I had my hands inside. I know I had hands inside the
13 box when I heard somebody say that, that the vote, that a voter
14 was here, or somebody was here to vote.

15 Q You didn't check your time piece at that time?

16 A No.

17 MR. WEINSTOCK: That's all I have. Thank you.

18 JUDGE BIBLOWITZ: Ms. Desa, any redirect?

19 MS. DESA: No.

20 JUDGE BIBLOWITZ: Anything else ?

21 MR. WEINSTOCK: Nothing further .

22 JUDGE BIBLOWITZ: Thanks. Thanks, Mr. Rodriguez. Thank
23 you.

24 (Witness excused)

25 JUDGE BIBLOWITZ: Nothing else, Ms. Desa?

1 MS. DESA: No other witnesses, Your Honor.

2 JUDGE BIBLOWITZ: Okay. I'll set a date for briefs .

3 MS. DESA: Your Honor, I would like to point out to you on
4 the record that the Board has found in very similar
5 circumstances that the board agent acted properly in not
6 permitting the voter, a labor voter to vote, and that, and these
7 cases are Atlantic International, 228 NLRB 1308 and Consumers
8 Energy, 337 NLRB @ 752.

9 MR. WEINSTOCK: I'm sure we'll deal with this in --

10 JUDGE BIBLOWITZ: Right, okay.

11 MS. DESA: I don't know that we're filing a brief, Your
12 Honor, but I did want to bring out those cases.

13 JUDGE BIBLOWITZ: Okay.

14 MS. DESA: And --

15 JUDGE BIBLOWITZ: Okay, so that means you're not going to
16 file a brief?

17 MS. DESA: I haven't been told that I should do that.

18 JUDGE BIBLOWITZ: Okay, okay.

19 MS. DESA: Our goal here is to just present the evidence.
20 We're not advocates for one or another. We just want all of the
21 evidence to be considered by yourself.

22 JUDGE BIBLOWITZ: And that citation was 337 752, right?

23 MS. DESA: It's 337 752, yes.

24 JUDGE BIBLOWITZ: Okay. For those who will be filing
25 briefs as I stated earlier I in representation cases we make it

1 faster, so I will give you until Monday, July 1st to file a
2 brief. Yes.

3 MR. BIRCHFIELD: Could we have two weeks?

4 JUDGE BIBLOWITZ: How about Wednesday, July 3rd?

5 MR. BIRCHFIELD: Thank you.

6 JUDGE BIBLOWITZ: Okay. Briefs will be due Wednesday,
7 July 3rd. Do you remember now you have to E-file the briefs as
8 you probably know. So, the briefs will be due on that date, no
9 later, and don't bother making your request for an extension of
10 time because it won't be granted. And you will have a decision
11 within a couple of weeks after that.

12 I thank the parties.

13 MS. VUJANOVIC: Your Honor, can I put it on the record
14 we're asking for an expedited --

15 JUDGE BIBLOWITZ: Well, you don't have to put it on the
16 record, just work it out with the reporter. I thank the parties
17 and the hearing is closed. Thank you.

18 **(Whereupon, at 12:52 p.m., the hearing in the above-entitled**
19 **matter was closed.)**

20

1

C E R T I F I C A T E

This is to certify that the attached proceedings done before the
NATIONAL LABOR RELATIONS BOARD REGION FOUR

In the Matter of:

PATIENT CARE OF PENNSYLVANIA, INC., D/B/A PATIENT CARE,

Employer,

And

LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 131,

PETITIONER.

Case No. 4-RC-101021

Date: June 20, 2013

Place: Allentown, Pennsylvania

Were held as therein appears, and that this is the original
transcript thereof for the files of the Board

Official Reporter

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**PATIENT CARE OF PENNSYLVANIA, INC.,
d/b/a PATIENT CARE**

Employer

and

Case No. 4-RC-101021

**LABORERS INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL 1310**
Petitioner

Emily DeSa, Esq., for the Regional Office.

Ira Weinstock, Esq., *Law Offices of Ira Weinstock, P.C.*, Counsel for the Petitioner.

Thomas Birchfield, Esq. and *Claire Vujanovic, Esq.*, *Fisher & Phillips, LLP*, Counsel for the Employer.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This matter, which was initiated by objections filed by the Employer and a Notice of Hearing on Objections to Election dated May 22, 2013¹, was heard by me on June 20, 2013 in Allentown, Pennsylvania. Pursuant to a Stipulated Election Agreement approved by the Regional Director on April 4, 2013, an election by secret ballot was conducted on April 30, 2013, from 8:30 to 9:30 a.m. in Unit A (professional unit) and Unit B (non-professional unit) as set forth in paragraph 5 of the Agreement. The ballot for voters in Unit A contained two questions, concerning (1) inclusion with non-professional employees in a unit for the purposes of collective bargaining, and (2) representation for purposes of collective bargaining by the Petitioner. The Tallies of Ballots, copies of which were made available to the parties at the conclusion of the election, showed the following results:

Voting Unit A—Ballot Question 1—Inclusion with Non-Professional Employees

Approximate number of eligible voters.....	5
Void Ballots	0
Votes cast for Inclusion	4
Votes cast for Exclusion	0
Valid Vote Counted	4
Challenged Ballots	0
Valid votes counted plus challenged ballots	4

Because a majority of the professional employees voting in Unit A voted for inclusion in a unit with non-professional employees, their votes on ballot Question 2, concerning representation by the Petitioner, were counted together with the votes of the non-professional employees in Unit B to decide the question concerning representation for the overall unit consisting of the employees

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2013.

in Units A and B.

Voting Units A and B—Representation by the Petitioner

5	Approximate number of eligible voters	8
	Void Ballots	0
	Votes cast for Petitioner	4
	Votes cast against participating labor organizations	3
	Valid votes counted	7
10	Challenged Ballots	0
	Valid votes counted plus challenged ballots	7

On May 3, 2013, the Employer timely filed Objections to conduct affecting the results of the election.

The Stipulated Election Agreement executed by the parties and approved by the Regional Director included a *Norris Thermador* list of eight eligible voters. Of these eight, seven cast their ballots as set forth above in the Tally of Ballots. The eighth eligible voter, Roberta Kasmiroski, did not. The Board Agent conducting the election did not allow her to vote because, as he and the Petitioner's witnesses testified, she arrived after the polls were closed at 9:30. Kasmiroski and the other witnesses of the Employer, however, testified that she appeared in the voting area shortly before 9:30. The Employer's objection is that she was improperly denied the opportunity to vote because the Board agent closed the polls early, prior to the 9:30 scheduled time².

I. The Facts

Three witnesses testified for the Employer, Dina Paolicelli, its executive director, Kasmiroski, and Niobe Delp, who was the observer for the Employer; the Petitioner did not have an observer. The witnesses for the Petitioner were Charles Clark and Julio Palomo, organizers, and Thomas Borum, business manager. In addition, David Rodriguez, the Board Agent who conducted the election, testified. The election was conducted in a room, herein called the conference room, in a basement office of the Employer. The office is approximately thirty six feet by thirty five feet with an entrance at one end of the room. People entering the office walk about five feet straight ahead after entering the office and left for about twenty five feet to the entrance to the conference room, which is about fourteen feet by ten feet. The only door into the conference room is on the right side of the fourteen foot wall (facing out from the room) closest to the entrance to the office. Adjacent, and to the left of the room (facing out from the room) is an empty office and the room adjacent to that is Paolicelli's office.

Paolicelli testified that there was a pre-election conference at about 8:00 a.m. at which the Board agent discussed the rules of the election and showed those present where the voting booth and the ballot box would be. He also said that his cell phone would be the official time for the election; there was no clock in the conference room. He said that the polls would be open from 8:30 to 9:30 and he told everybody not to return before 9:30. She testified that he also said that if all the voters had voted, he would close the polls early. Shortly before the polls opened at

² An additional objection of the Employer was that the Petitioner's representatives at the election were "four large men" whose presence and statements in or near the polling area restrained and coerced employees in the exercise of their Section 7 rights, but there was no evidence to support this objection, and I therefore recommend that it be overruled.

8:30, he told Paolicelli to go to her office and keep the door closed during the voting period, and told all other non-voters to leave the area. She didn't leave her office until she heard some male voices outside of her office, and looked at her computer screen which said that it was 9:29. She opened the blinds on her door and saw two of the Petitioner's agents in the office and she left
 5 her office; at that time she did not see Kasmiroski. She then went into the conference room, where she saw the other two agents of the Petitioner speaking with the Board agent and the Employer's observer. The Board agent then said that he was going to break the ballot box and count the ballots, and he took the ballot box from the table, punched the top of the box and broke the seal. Although her testimony on the following event was not very clear, she testified
 10 that just as he hit the ballot box, Delp said that the one employee who had not voted was in the office, but the Board agent said that because the seal on the ballot box had been broken, she could not vote. In answer to a question from counsel for the Employer, she testified that she saw Kasmiroski about twenty to forty seconds after she left her office and Kasmiroski was standing at a desk about fifteen feet from the door to the election room. She believes that Kasmiroski
 15 said that she thought that the polls opened at 9:30. The Board agent did not ask the parties if they would agree to allow Kasmiroski to vote, nor did he offer to allow her to vote under challenge.

Kasmiroski is employed by the Employer as a speech therapist and was one of the
 20 employees listed on the *Norris Thermador* list. She sees patients in her home and reports to the Employer's office only about once every six weeks. She testified that she was aware that the time of the election was 8:30 to 9:30 a.m., but was busy that morning at her home office on paperwork for another job that she has. She completed the work at 9:00 a.m. and left at that time to drive to the Employer's office; she testified that she drives from her home to the office
 25 frequently and knows that it usually takes twenty minutes, which would leave her ten minutes to vote. When she walked through the door into the office she saw a group of people standing outside the door to the conference room, with the conference room door open, and there seemed to be a "commotion going on." Delp was not in the conference room when she walked in the office, she was sitting at the first desk in the office. She looked at her cell phone at that
 30 moment and it said 9:29; there was a clock on the wall in the office and it also said 9:29. She then heard a female voice in the area of the conference room say that there was another eligible voter present followed by some confusion and then the Board agent said that because he had broken the seal of the ballot box, the poll was closed. She testified that she never said that she thought the polls closed at 10:00; she said that she thought that the polls closed at 9:30, and that she had a minute or so to vote. She never spoke to the Board agent.
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Delp attended the pre-election conference and testified that the Board agent told her of her responsibilities as an observer, said that his cell phone would be the official time, and that if
 40 all the voters voted, he would close the polls early. He told everyone but Delp to leave the room shortly before 8:30 and opened the polls at 8:30. Later, the Board agent said, "It's almost 9:29³, and I'm going to be closing the polls soon." At that point, one of the Petitioner's representatives was at the door of the conference room asking if he could come in to the room. She asked the Board agent if it was alright for them to come in, he said that it was, and she motioned for them to come in; Paolicelli came into the room right behind them. She testified:
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And while that was going on the board agent was coming around the table with the box that he was punching in. As soon as he punched it in [I] turned around and there was Ms. Kasmiroski waiting to vote. I let him know that she was here and he said it's too late the box has already been opened.
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³ In the affidavit she gave to the Employer, she states that the Board agent said: "It's 9:29."

At that point, the ballot box had been opened, but the ballots were not all out of the box. She testified that from the time that the Board agent said that it was 9:29 until she saw Kasmiroski, “No more than thirty five seconds” elapsed. The Board agent did not ask the parties if they would agree to allow her to vote and he did not offer to let her vote a challenged ballot.

Clarke testified that at the pre-election conference the Board agent spoke of the election procedures, that the poll would be open from 8:30 to 9:30, gave instructions to the Employer’s observer, and said that his cell phone would be the official time piece of the election. Sometime after 8:20 he asked everyone to leave and he and the representatives of the Petitioner went to Dunkin Donuts, about a mile away. They left Dunkin Donuts at about 9:20, drove back to the building where the election was taking place and parked at a location about one hundred yards from the entrance to the building. They walked into the building and down the stairwell to the office. When they walked into the office, he checked his watch and it was 9:31. When they entered the office he saw the Board agent and the observer in the conference room, and a secretary sitting at her desk at the entrance to the office; just as they entered the office, Paolicelli walked out of her office. The Board agent said that the polls were closed and that they would wait for the Employer’s representatives before counting the ballots. He then closed up the voting booth and punched in the ballot box. At that point, which Clarke testified was 9:39, Paolicelli said that there was another voter in the office and the Board agent said that he could not allow her to vote because he had already opened the ballot box; because he was outside the conference room, he couldn’t see the ballot box, but he heard him punch the box. He testified that the only thing he heard Kasmiroski say was: “I thought that I had until 10:00.”

Palomo testified that at the conclusion of the pre-election conference, the Petitioner’s representatives left the office and went to Dunkin Donuts. They left Dunkin Donuts at about 9:00 and drove to the building where the election was being conducted and parked the car: by this time it was “after 9:15.” They waited in the cars until about 9:27 and walked into the building, at which time it was 9:30. They walked downstairs to the office and when they entered the office he, again, checked his watch and it was 9:31. He asked the observer if they could come in, and she asked the Board agent and he said that as it was after 9:30, they could and he walked into the conference room. He and one other of Petitioner’s representatives were in the conference room; the other two remained outside the conference room. Paolicelli and the Employer’s representatives were also in the conference room. The Board agent said that as it was after 9:30, the polls were closed and he removed the tape from the ballot box and opened the box and removed some ballots from the box. At that point, Paolicelli said that another voter had arrived although as he was in the conference room and she was in the office he could not see her. The Board agent said that the ballot box was already open and that nobody else could vote and he asked both sides to acknowledge that the box was already open and that he could not allow anyone else to vote, and they did so.

Borum testified that he and the other of representatives of the Petitioner waited in their car in the parking lot at the office building from about 9:00, and entered the building at about 9:30, walked downstairs and entered the Employer’s office at about 9:31, the time that he saw on his cell phone. He remained outside the conference room with Clarke. When the Employer’s representatives arrived, the Board agent removed the tape from the ballot box and opened the ballot box and a voter “walked in to vote.” Borum testified that it was then between 9:40 and 9:45. The Board agent told her that because he had already opened the ballot box, she couldn’t vote. She said that she thought that she had until 10:00 to vote and he told her that voting concluded at 9:30.

David Rodriguez, an attorney for the Board, was the Board agent conducting this

election. He testified that he has worked for the Board for about three years and, during that period he has conducted between twenty and forty elections and has never said at any election that he would close the polls early if all eligible voters had voted. When he arrived at the voting area, he was met by the Employer's representatives, who took him to the Employer's office and the conference room where the election was to be conducted. He then conducted the pre-election conference with the Employer's representatives, Delp and Paolicelli, as well as the Petitioner's representatives. He told those present that the conference room was a no electioneering area and that the observer was not allowed to speak to voters, other than saying hello. He also said that he and the observer would be there until 9:30. He showed them the *Excelsior* list and said that his iPhone was the official timer of the election, showed them the ballot box, sealed it in their presence and set up the election booth. At about 8:25, he asked everyone but the Employer's observer to leave, which they did. As there were only seven voters during the voting period, there was a lot of down time and he, periodically told the observer how much time remained before the polls would be closed. In addition, a few minutes prior to the closing of the polls, he told Delp that normally he would take down the voting booth at that time, but as one voter had not voted, he would leave it up until he tallied the ballots.

He testified that as it got close to 9:30, he was checking his cell phone regularly because he likes to close the polls at exactly the closing time, and "...when I saw it turn 9:30, I went to the front door which was open to the conference room," stuck his head out the door and said, "9:30, polls are closed." At that point neither the representatives of the Employer nor the Petitioner had entered the office or the conference room, nor did he see or hear Kasmiroski; the observer did not object to him closing the polls, nor did anybody say that it wasn't 9:30. After announcing that the polls were closed, he went back to the table in the conference room and stood behind the ballot box, waiting for everybody to come in to the room. The Petitioner's representatives entered the conference room first, shortly after he announced that the polls were closed, closely followed by Paolicelli, and Rodriguez said that they would wait for the other representatives of the Employer prior to counting the ballots. They entered shortly thereafter, and Rodriguez explained the mechanics of counting the ballots in a *Sonotone* election. He then said that he would take each ballot out of the ballot box, identify how the voter had voted, and show the ballot to all those present, and place the ballot on the table. He then placed the ballot box on its side on the table, and punched his fist through the side of the box. He opened the flaps of the ballot box and placed his hands in the box to remove the ballots when he heard somebody say, "Oh, the last voter is here," and he replied, "I'm sorry, the box is open, she's not going to be able to vote." He did not look at his cell phone or watch to see what time it was at that time. The voter never entered the conference room and never demanded to vote and neither party contended at that time that she should be permitted to vote or to vote subject to a challenge ballot. He then removed the ballots from the ballot box and counted the ballots.

II. Analysis

We begin the analysis with the longstanding proposition that the party alleging the misconduct, the Employer herein, bears the burden of proof for setting aside the election. *Consumers Energy Company*, 337 NLRB 752 (2002). Further, as counsel for the Employer states in his Brief, when an election is close, such as in the instant situation where the vote was 4 to 3, the mechanics of the election should be more closely scrutinized, *First Student, Inc.*, 359 NLRB No. 120 (2013); further, an election should be set aside only when a determinative number of voters were possibly disenfranchised by an election irregularity of an early closing of the polls. *Garda World Security Corp.*, 356 NLRB No. 91 (2011).

There are numerous differences in the testimony of the witnesses herein and that is not surprising as the conflict involves a minute, or two, or three. I need not decide whether

Rodriguez stated that he would close the polls early if all the eligible voters had voted⁴, as not all the eligible voters voted prior to the closing of the polls, and I need not decide whether Kasmiroski said that she thought that the polls closed at 10:00, as that is also not determinative herein. What is relevant is that whether Kasmiroski arrived at the office between 9:29 and 9:30, or after 9:30; I find the latter more believable and that her “late” arrival was not due to any of the parties herein; rather it was caused by the fact she left her home office too late to arrive in time for the election. *Sahuaro Petroleum*, 306 NLRB 586, 587 (1992). Even if I were to credit the testimony of Paolicelli and Delp, a careful examination of their testimony establishes that Kasmiroski appeared at the Employer’s office after 9:30. Paolicelli testified that when she heard male voices outside her office she checked her computer screen and it said 9:29; but, of course, it could have been anytime from exactly 9:29 to 9:29 and 59 seconds. I find it more likely that it was actually 9:30, or thereafter, as it would have been foolish for the Petitioner’s representatives to arrive earlier than the requested time; they would have nothing to gain and a lot to lose. But even if Paolicelli’s computer did say 9:29 plus, by the time that she left her office, followed the Petitioner’s representatives into the conference room, heard the Board agent say that he was going to break the ballot box, and begin to do so, at least another minute must have passed, making the time 9:30 plus, before anybody recognized Kasmiroski’s presence in the office. Delp testified that Rodriguez either said, “It’s 9:29 and I’m going to be closing the polls soon” or “It’s almost 9:29 and I’m going to be closing the polls soon.” She testified that, at that point, Petitioner’s representatives came to the door of the conference room asking if they could come in. She asked Rodriguez if they could come in, he said that they could, and they walked into the room with Paolicelli right behind them. Rodriguez then came around the table with the ballot box, and as he began to punch in the box, she saw Kasmiroski. Like the situation with Paolicelli, I cannot believe that all this took less than a minute from the time that Rodriguez said that it was 9:29 and that he was closing the polls soon.

I found Rodriguez’ testimony the most reasonable and credible. At exactly 9:30, he stuck his head out of the conference room door and said that it was 9:30 and the polls were closed. Neither the Petitioner or the Employer’s representatives were in the area at that moment. It wasn’t until after they came into the office, that he explained the procedure in a dual-ballot election, the mechanics and rules of counting the ballots, placed the ballot box on its side, and punched in the ballot box that Kasmiroski’s presence was made known. Anyone familiar with the conduct of a Board conducted election knows that Rodriguez’ post closing activities had to take at least a few minutes, not twenty to forty seconds or thirty five seconds. The fact that nobody protested his refusal to allow Kasmiroski to vote reinforces this finding. *Consumers Energy Company, supra*. As the Board stated in *Atlantic International Corporation*, 228 NLRB 1308 (1977):

It has long been the Board’s standard practice in late voter situations to rely upon the reasonable and sound discretion of the Board agent conducting the election as to whether a particular employee should be permitted to cast a ballot. Here, by the time Pandya arrived at the polling area, the Board agents had dismantled the voting booth, taped the ballot box, and were awaiting the start of the ballot count. The placing of the tape on the slot in the box signaled the close of the election, and this fact was understood by all present; no one, including the potential voter, objected to the decision to preclude him from voting. We are unable to say in the circumstances of this case, and particularly where the box had been taped, that the Board agents abused their discretion when they refused Pandya a ballot.

⁴ As he told the representatives of the Employer and the Petitioner to return at 9:30, it seems highly unlikely that he would have said this.

In the instant matter, the ballot box had been broken open by the time Kasmiroski's presence was made known; that is a more apparent reason to not allow her to vote than having tape on the ballot box.

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I therefore recommend that the Employer's objections be overruled in their entirety.

Conclusions

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Based upon the above, I recommend that the Employer's Objections be overruled in their entirety, and that the Board's Regional Office issue an appropriate certification certifying the Petitioner as the collective bargaining representative of the Employer's employees in the appropriate unit herein.⁵

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Dated, Washington, D.C. July 23, 2013

Joel P. Biblowitz
Administrative Law Judge

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⁵ Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this Decision may be filed with the Board in Washington, D.C. within 14 days from the date of this Decision and Recommendation. Exceptions must be received by the Board in Washington by August 6, 2013.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

PATIENT CARE OF PENNSYLVANIA, INC.)	
D/B/A PATIENT CARE)	
Employer)	
)	
and)	Case No.: 04-RC-101021
)	
LABORERS LOCAL UNION NO. 1310)	
)	
Petitioner)	
)	

EMPLOYER'S OBJECTIONS TO THE CONDUCT OF THE ELECTION

Patient Care of Pennsylvania, Inc. d/b/a Patient Care, the employer in the above-captioned case (hereinafter "Employer"), timely files, pursuant to NLRB Rules and Regulations Section 102.69(a), these Objections to the Conduct of the Election conducted on Tuesday, April 30, 2013, at the Employer's facility in Allentown, Pennsylvania, in connection with the above-captioned case.

PRELIMINARY STATEMENT

On April 4, 2013 the Employer and the Laborers International Union of North America, Local No. 1310 (hereinafter "Union") entered into a Stipulated Election Agreement, which was approved by the Regional Director. The Stipulated Election Agreement provided that a secret ballot election was to be conducted by the Region between 8:30 a.m. and 9:30 a.m. on Tuesday, April 30, 2013, in the Employer's small conference room (hereinafter the "polling area") located at 4949 Liberty Lane, Suite 5, Allentown, PA. Pursuant to the Stipulated Election Agreement, the parties also executed a Norris-Thermador eligibility agreement which included the following eight (8) employees:

Scott Beckerman, Niobe Delp, Julianne Emerick, Mari-Cay Hartman, Roberta Kasmiroski, Donna Pontician, Valerie Shubeck, and Donna Lee Walck

Thereafter, on April 30, 2013, at approximately 8:30 a.m. the polls opened and the election commenced without incident. At approximately 9:29 a.m. on April 4, 2013, Employer representatives observed that two Union officials had entered the small office space and proceeded to the polling area prior to 9:30 a.m. Employer observers also believe that the Board Agent announced the time and closed the polls early. Immediately, thereafter, but prior to 9:30 a.m., Union representatives entered the polling area. The Employer representatives, hearing Union representatives walk by, entered the polling area at approximately 9:30 a.m. Also at 9:30 a.m., eligible voter Roberta Kasmiroski entered the small office adjacent to the polling area and attempted to vote. The Employer's observer advised the Board Agent that an eligible voter was present wanted to vote. The Board Agent, having moved the taped ballot box into the center of a conference table, responded, "Oh well, I just opened the box, so she will not be able to vote." Witnesses will attest that the box was not open and no ballots had been removed. Instead, the Board Agent was in the act of removing the tape seal while responding to the Employer's observer.

Roberta Kasmiroski was listed as an eligible employee voter on the parties' Eligibility Agreement. The Board Agent made no attempts to inquire as to whether the parties would consent to allow Roberta Kasmiroski to vote. Nor did the Board Agent allow Ms. Kasmiroski to vote under challenge.

Of the eight (8) employees listed on the Eligibility Agreement, seven (7) were permitted to vote. The vote count at the close of the polling period had four (4) employees voting to be represented by the Petitioner and (3) voting against representation. There were no challenges.

OBJECTION 1

The polls at the polling place closed prior to the agreed upon and officially published closing time of 9:30 a.m. on April 30, 2013. The Board Agent's early closure of the polls breached the Stipulated Election Agreement and the official Notice of Election. As a result, the number of employees possibly disenfranchised by the early closure is sufficient to affect the election outcome and the conduct of the Board Agent interfered with a free and fair election.

OBJECTION 2

Roberta Kasmiroski, who sought an opportunity to vote in the April 30, 2013, election, was denied that opportunity by the Board Agent despite being in the polling place and seeking to vote at or before the scheduled time for closure of the polls. The Board Agent's decision to deny Roberta Kasmiroski the opportunity to vote violates the Board's rules and procedures. Roberta Kasmiroski was disenfranchised by the Board Agent's actions which interfered with a free and fair election and is sufficient to affect the election outcome.

OBJECTION 3

Roberta Kasmiroski was listed on the Eligibility Agreement, and as such the parties had already stipulated as to her individual eligibility. The Board Agent's refusal to seek agreement of the parties as to whether Roberta Kasmiroski should be allowed to cast a ballot, as is directed in the Board's rules and procedures, caused her disenfranchisement. In addition, as Roberta Kasmiroski's vote could affect the results of the election, the Board Agent's actions interfered with a free and fair election.

OBJECTION 4

Roberta Kasmiroski was listed on the Eligibility Agreement, and as such the parties had already stipulated as to her individual eligibility. The Board Agent's refusal to allow her to vote

under challenge when a dispute arose as to her timeliness, as is directed in the Board's rules and procedures, caused her disenfranchisement. In addition, as Roberta Kasmiroski's vote could affect the results of the election, the Board Agent's actions interfered with a free and fair election.

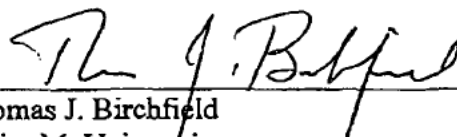
OBJECTION 5

The Union representatives were four large men whose presence in close proximity to the polling area (if not actual presence in the polling area) and whose statements prior to the closure of the polls restrained and coerced employees in exercising their Section 7 rights.

By the above and other conduct, the conditions necessary for a valid National Labor Relations Board election were destroyed and, therefore, the election was invalid.

WHEREFORE, in light of the objectionable conduct described above, Employer requests that the election be set aside and a new election held at the earliest possible date.

Respectfully submitted,



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cvujanovic@laborlawyers.com

Dated this 2nd day of May 2013.

Louisville 94320

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

ALMOST FAMILY/PATIENT CARE

Employer

and

Case 4-RC-101021

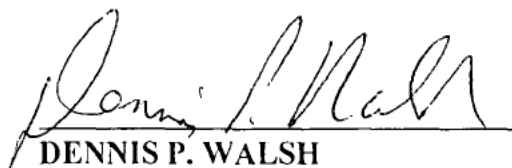
LABORERS LOCAL UNION NO. 1310

Petitioner

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter is rescheduled from Monday, April 1, 2013 to Friday, April 5, 2013 at 10:00 a.m. in the Regional Office, 615 Chestnut Street, Suite 710, Philadelphia, PA. The hearing will continue on consecutive days until concluded.

Dated: March 28, 2013

A handwritten signature in black ink, appearing to read "Dennis P. Walsh", is written over a horizontal line.

DENNIS P. WALSH

Regional Director, Fourth Region
National Labor Relations Board
615 Chestnut Street, Suite 710
Philadelphia, PA 19106-4413

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

ALMOST FAMILY/PATIENT CARE		Case 4-RC-101021
	Employer	
and		
LABORERS LOCAL UNION NO. 1310		Date of Mailing: March 28, 2013
	Petitioner	

AFFIDAVIT OF SERVICE OF: ORDER RESCHEDULING HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document by post-paid first class mail upon the following persons, addressed to them at the following addresses:

THOMAS J. BIRCHFIELD, ESQUIRE MARK GOMSAK, ESQUIRE FISHER & PHILLIPS, LLP 220 WEST MAIN STREET, SUITE 2000 LOUISVILLE, KY 40202	IRA H. WEINSTOCK, ESQUIRE LAW OFFICES OF IRA H. WEINSTOCK, PC 800 NORTH SECOND STREET, SUITE 100 HARRISBURG, PA 17102-3233
TINA PAOLICELLI, SUPERVISOR ALMOST FAMILY/PATIENT CARE 4949 LIBERTY LANE, SUITE 5 ALLENTOWN, PA 18106-9017	CHARLES CHUCK LABORERS LOCAL UNION NO 1310 317 N WASHINGTON STREET, SUITE 2 WILKES-BARRE, PA 18705

Subscribed and sworn to before me this 28 th day of March, 2013	Designated Agent /s/ Rita M. Messina NATIONAL LABOR RELATIONS BOARD
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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

PATIENT CARE OF PENNSYLVANIA, INC.
D/B/A PATIENT CARE

Employer

and

LABORERS INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL 1310

Petitioner

Case 4-RC-101021

Date of Mailing: May 24, 2013

AFFIDAVIT OF SERVICE OF: ORDER RESCHEDULING HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document by post-paid first class mail upon the following persons, addressed to them at the following addresses:

THOMAS J. BIRCHFIELD, ESQUIRE MARK GOMSAK, ESQUIRE FISHER & PHILLIPS, LLP 230 W. MAIN STREET, SUITE 2000 LOUISVILLE, KY 40202-1395	IRA H. WEINSTOCK, ESQUIRE LAW OFFICES OF IRA H. WEINSTOCK, PC 800 NORTH SECOND STREET, SUITE 100 HARRISBURG, PA 17102-3233
TINA PADLICELLI, SUPERVISOR PATIENT CARE OF PENNSYLVANIA, INC. D/B/A PATIENT CARE 4949 LIBERTY LANE, SUITE 5 ALLENTOWN, PA 18106-9017	MR. CHARLES CHUCK LABORERS LOCAL UNION NO. 1310 317 N. WASHINGTON STREET, SUITE 2 WILKES-BARRE, PA 18705

Subscribed and sworn to before me this

24th day of May, 2013

Designated Agent

/s/ Rita M. Messina

NATIONAL LABOR RELATIONS BOARD

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

PATIENT CARE OF PENNSYLVANIA, INC.
D/B/A PATIENT CARE

Employer

and

Case 4-RC-101021

LABORERS INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL 131

Petitioner

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter is rescheduled from **Monday, June 10, 2013 to Thursday, June 20, 2013 at 9:30 a.m.** in a hearing room at the Edward N. Cahn U.S. Courthouse and Federal Building, 504 Hamilton Street, Allentown, Pennsylvania. The hearing will continue on consecutive days until concluded.

Dated: May 24, 2013

A handwritten signature in dark ink, appearing to read "Dennis P. Walsh", is written over a horizontal line.

DENNIS P. WALSH

Regional Director, Fourth Region
National Labor Relations Board
615 Chestnut Street, Suite 710
Philadelphia, PA 19106-4413